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New York Times

https://www.nytimes.com/2018/03/17/climate/scott-pruitt-political-ambitions.html?rref=collection%2Ftimestopic%2FEnvironmental%20Protection%20Agency&action=click&contentCollection=timestopics®ion=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection

Scott Pruitt, Trump's Rule-Cutting E.P.A. Chief, Plots His Political Future

By Coral Davenport, 3/17/18

WASHINGTON — The headline speakers at the Conservative Political Action Conference's annual showcase, the Ronald Reagan Dinner, have historically been rising stars in the Republican Party — firebrand pundits, prominent activists, future presidential candidates.

Last month, it was Scott Pruitt, the administrator of the Environmental Protection Agency.

In the past year, Mr. Pruitt has emerged as a hero to President Trump's supporters for his hand in rolling back environmental rules at an agency long disliked by farmers, the fossil fuel industry and the far right. And he has occasionally shocked his employees by criticizing the very agency he heads.

"It was an agency that was weaponized against certain sectors of the economy," Mr. Pruitt said to applause at the Reagan dinner.

Now, people close to Mr. Pruitt say he is using his perch as Mr. Trump's deregulatory czar to position himself for further political prominence — starting with a run for office in his home state of Oklahoma. He is widely viewed as a future candidate for senator or governor there, and Mr. Pruitt has made it known that if the president replaces his beleaguered attorney general, Jeff Sessions, he would be ready to step into the job.

Mr. Pruitt's national profile has soared. He has appeared on the cover of the prominent conservative magazines National Review and The Weekly Standard. And Mr. Trump has privately praised some of Mr. Pruitt's more controversial proposals, such as his idea to stage "red team, blue team" debates of climate-change science.

Mr. Pruitt has faced criticism, and received a reprimand from his boss, for spending more than \$107,000 of public money on first-class air travel. But he remains a favorite of Mr. Trump's, and after the past week of White House turmoil — with the president dismissing his secretary of state and intimating that a greater shake-up may follow — Mr. Pruitt appears to have job security that could work to his advantage over time.

The endgame, say people who have spoken with Mr. Pruitt, is a possible run at the presidency in 2024 or later. "It was always known among elite Republicans that this guy had higher ambitions," said Keith Gaddie, a professor of political science at the University of Oklahoma. "The question was just, 'Does he want to be president, or does he want to be attorney general?'"

To jump from E.P.A. chief to any of those posts would be highly unusual for the head of a historically wonky, low-profile agency. "The take has always been that E.P.A. is where your political career goes to die," said William K. Reilly, who headed the agency under President George Bush.

Even in Republican administrations, Mr. Reilly said, the job historically involved imposing regulations on polluting industries, which can create powerful enemies. "It's the kind of job that if you do it right, you antagonize a lot of people — big industry, even your own president," he said.

But Mr. Pruitt has flipped the script. As Oklahoma's attorney general, he sued the E.P.A. 14 times, and he has spent the past year working to undo regulations that would have required farmers to restrict their fertilizer use; oil and gas firms to control global

warming pollution from their wells; and Midwestern power plants to burn less coal.

“He has made a big splash,” Mr. Reilly said. “The mission he is on is not one that his predecessors at E.P.A. have recognized. And it could be a good strategy to win the constituency that elected the president.”

Mr. Pruitt’s precise political path forward is not certain. He is viewed as a likely candidate to run for a Senate seat in Oklahoma in 2020 if the incumbent, James Inhofe, retires. But it remains unclear if Mr. Inhofe, 83, will do so, and his office declined to comment. There is also speculation that Mr. Pruitt might jump in as a last-minute candidate in this year’s governor’s race.

When asked about its boss’s ambitions, Mr. Pruitt’s staff emphasizes that he is focused only on the job at hand. It also notes that the E.P.A. chief has made a significant effort to promote his work. “Administrator Pruitt has utilized a wide array of news outlets to advance President Trump’s agenda on regulatory certainty and environmental stewardship,” his spokesman, Jahan Wilcox, wrote in an email. Through Mr. Wilcox, Mr. Pruitt declined an interview request.

Some former E.P.A. chiefs noted that Mr. Pruitt’s unusual speed at attempting to dismantle regulations could mean that those efforts might not stand up to later legal challenges. “The policies he’s pushing play very well in his home state and with the base — but you can’t do them overnight,” said Christine Todd Whitman, who headed the E.P.A. in the George W. Bush administration and before that was the governor of New Jersey. “They’re getting rushed out. I don’t think the homework is being done. It makes for good sound bites, but they might not stand up legally.”

That might not affect Mr. Pruitt’s longer-term political aspirations, though. “Pruitt could be gone from E.P.A. by the time that happens,” Ms. Whitman said.

Among the largest regulations Mr. Pruitt aims to roll back, at Mr. Trump’s direction, is an Obama-era clean water rule, known as Waters of the United States, which would have restricted the chemical fertilizers used by farmers. The rule has been particularly unpopular with the rural voters who make up the core of Mr. Trump’s base. This year, Mr. Pruitt announced he would freeze implementation of the rule and issue a more farmer-friendly version by the spring.

Last year, Mr. Pruitt made two trips to Iowa, a key campaign state in presidential elections, to talk about his agenda. In the summer, he met with farmers to tout his rollback of the clean water regulation. In December, he promised that the E.P.A. would not use regulations to curb the production of corn ethanol — an issue considered key for presidential candidates in Iowa.

Mr. Pruitt has also halted implementation of Mr. Obama’s climate change rules, which would have frozen construction of new coal-fired power plants, and has said he intends to propose a replacement rule this year. Last April, he spoke at a Pennsylvania coal mine, telling workers that “the regulatory assault is over.”

Behind the scenes, Mr. Pruitt has spent time with major political donors. Last year he met with Foster Friess, a Republican fund-raiser, and with investors connected to Sheldon Adelson, the party megadonor, according to meeting records obtained by The New York Times. He also met with Steven Chancellor, an Indiana coal executive and Republican fund-raiser, according to documents obtained by the Sierra Club and published by Politico.

“All of this is unusual,” Ms. Whitman said. “If you’re in a federal position, you should not appear to be campaigning.”

Were Mr. Inhofe, long known as Congress’s most vocal opponent of efforts to fight global warming, to retire, Mr. Pruitt would be a natural fit to try to win his Senate seat.

Mr. Pruitt, who keeps his watch set to the time in Oklahoma even when he is working on the East Coast, has traveled to his home state regularly. Last March through May he spent 43 out of 92 days in Oklahoma or traveling to or from the state, according to a report by the Environmental Integrity Project.

Mr. Pruitt’s rise to prominence in Oklahoma began during the eight years he managed and co-owned the Oklahoma City RedHawks, a minor league baseball team. He won a seat in the State Legislature and opened a small legal office, Christian Legal Services, to challenge government actions that he saw as compromising individual rights.

As an owner of the RedHawks, Mr. Pruitt ran television ads that featured himself promoting the team. They gave him statewide recognition and played a role in his 2010 race for attorney general, said Chris Wilson, an Oklahoma-based Republican strategist who worked on the presidential campaign of Senator Ted Cruz of Texas. “He had instant name recognition,” Mr. Wilson said.

As attorney general, Mr. Pruitt built close ties with the state's oil and natural gas industry. A 2014 investigation by The Times found that energy lobbyists drafted letters for Mr. Pruitt to send to the E.P.A., on state stationery, outlining the economic hardship of environmental regulations on their industries.

The ties have paid off politically. Harold G. Hamm, who advised the presidential campaigns of Mr. Trump and Mitt Romney and is the chief executive of Continental Resources, an Oklahoma oil and gas company, was a co-chairman of Mr. Pruitt's 2013 re-election campaign.

Mr. Pruitt's tenure at the E.P.A. has already proven popular with the oil and natural gas industry. His proposals have been aimed at loosening regulations, particularly an Obama-era rule that would have required companies to rein in emissions of methane, a powerful greenhouse gas, from new oil and gas wells. (A federal appeals court later ruled that the effort was illegal.)

Energy companies were also delighted when Mr. Pruitt flew to Morocco in December, in an unusual trip aimed at promoting exports of natural gas. That trip received criticism, though, in part because the E.P.A. does not oversee natural gas exports.

The E.P.A.'s inspector general is investigating some of Mr. Pruitt's trips, including the one to Morocco and some to Oklahoma, but it is not clear whether that will be a liability. "It's not great, but it's not fatal," Michael McKenna, a Republican energy lobbyist who advised the Trump campaign, said referring to Mr. Pruitt's airline expenses. "None of the old rules seem to apply," he said. "The current president seems to have erased a lot of them."

Politico

<https://www.politico.com/magazine/story/2018/03/16/jeff-sessions-replace-with-scott-pruitt-donald-trump-217646>

It Won't Be Easy for Trump to Replace Sessions With Pruitt

By Victoria Bassetti and Norman Eisen, 3/16/18

Having fired Secretary of State Rex Tillerson in cold blood this week, President Donald Trump is reportedly now turning a gimlet eye to Attorney General Jeff Sessions, with a view to replacing him with Environmental Protection Agency Administrator Scott Pruitt. That alarms even Sessions' critics, who fear Pruitt—with his proven willingness to do the president's bidding—might interfere with, or even fire, special counsel Robert Mueller.

Tempting as the prospect of Attorney General Pruitt might seem to the president, he should resist it for three reasons. This move could be challenged in the courts, setting off a barrage of litigation. Pruitt might find himself too conflicted to touch the Mueller investigation, just as Sessions was. And the firing could well worsen the president's exposure to obstruction of justice proceedings.

First, installing Pruitt as Sessions' replacement would have to meet a bevy of legal requirements—no less than two statutes, one White House order, one Department of Justice order and the Constitution. Under normal circumstances, these authorities dictate that a fired (or resigned) attorney general would be succeeded on a temporary basis by the deputy attorney general, who would serve while a permanent replacement is named by the president and then confirmed by the Senate. That means Deputy Attorney General Rod Rosenstein would normally step up.

The president's distaste for Rosenstein, however, is well known. If Trump wants to quickly sack Sessions and sideline Rosenstein by installing Pruitt, he might look to a statute known as the Vacancies Reform Act. The VRA allows the president to ignore standard operating procedure and insert a handpicked acting head of the Department of Justice for a minimum of 210 days—more than long enough to shut down the special counsel that so annoys the president.

But even if Trump tries this route—installing Pruitt as temporary attorney general—he could still run into problems. The VRA allows the president to name an acting attorney general were Sessions to "die[], resign[], or ... otherwise [be] unable to perform the functions and duties of the office." Trump could pick anyone who has already been confirmed by the Senate to any job in the executive branch—from Pruitt to Secretary of Education Betsy DeVos to the undersecretary for farm and foreign agricultural services—and make him or her the acting attorney general. But nowhere among the triggering events allowing such an appointment does the act expressly list firings. Several legal commentators have argued that it cannot be used by the president, as law professor Steve Vladeck put it, "to hand-pick a short-term (and, potentially, un-re-confirmable) successor." That would make a mockery of the Senate's constitutional "advise and consent" role.

Not everyone agrees. In 1999, the DOJ's own Office of Legal Counsel said in an opinion that it thought the law can be used to

replace fired appointees. The OLC can be notoriously protective of the president; it is the same office that last year reversed decades of guidance to say that antinepotism law did not bar the hiring of Jared Kushner and Ivanka Trump. The courts sometimes reject OLC's views; this particular one has not been tested before a judge. No one knows how that would come out.

That's where the VRA gets even riskier for Trump. It has a kicker: Any action taken by someone improperly installed in office "shall have no force or effect." And anyone affected by a decision made by an illegitimate attorney general has standing to sue. Given the success plaintiffs have had in blocking so many Trump policies from the first Muslim ban forward, it does not take much imagination to envision a tidal wave of lawsuits hitting almost every move taken by Pruitt if he is appointed under the VRA after a Sessions firing. Even Mueller could go to court if he were terminated or interfered with—and if there is one thing he has demonstrated, it is that he is not afraid to bring cases.

Second, Trump's unleashing this tsunami of litigation might be for naught. There is a reasonable case that even if Pruitt were validly appointed, he, like Sessions, would have to recuse himself from the Russia investigation. All DOJ lawyers are bound by regulation to step aside from criminal investigations if they have a "political relationship" with someone who has a substantial interest in that investigation.

Pruitt's political relationship with the president is deep and close. He has acted as the president's political accomplice for more than a year now. It would lead any decent lawyer to recuse himself from the Mueller probe. Just this January, Pruitt made his political allegiance to the president plain: "After meeting him, and now having the honor of working for him, it is abundantly clear that President Trump is the most consequential leader of our time," Pruitt said. "No one has done more to advance the rule of law than President Trump. The president has liberated our country from the political class and given America back to the people."

Of course, Pruitt has demonstrated that he has little concern about conflicts of interest or their appearance. He is already under fire for a series of ethical blunders at the EPA. Nevertheless, as they did with Sessions, the ethicists at the DOJ might insist.

Some might contend this argument goes too far. Wouldn't any interim attorney general the president appointed be conflicted out of overseeing Mueller? Of course not. We would not object if the president had reached out to someone independent and of stature who had not sworn the kind of loyalty oath Trump prefers. But that is not Pruitt.

Finally, there is the obstruction question. Mueller is already reportedly looking at the president's previous efforts to remove Sessions as part of a possible obstruction of justice case. A Sessions firing with corrupt intent to frustrate the Russia investigation would be another tile in the mosaic of misconduct that began with demanding loyalty from former FBI Director James Comey (the same loyalty Pruitt has so abundantly evinced) and culminated in Comey's firing. Richard Nixon's Saturday night firing frenzy did not ultimately save him, and Trump could well be hastening that same fate for himself.

E&E Climatewire

<https://www.eenews.net/climatewire/stories/1060076661/search?keyword=EPA>

How do you talk to Pruitt about climate change?

By Niina Heikkinen, 3/19/18

U.S. EPA boss Scott Pruitt is skilled at sticking to his talking points, particularly when it comes to climate change.

For journalists covering that issue, pushing Pruitt beyond his rhetoric has become more important as the EPA chief has become one of the Trump administration's highest-profile officials casting doubt on mainstream climate science.

Over a year into his tenure at EPA, Pruitt has offered a rotating selection of statements on his views about climate change. Since his confirmation hearing, he has said the degree of human responsibility cannot be measured "with precision." At least once, he has suggested climate change may even be a good thing for humans. His message has shifted somewhat depending on his audience, but his public statements regularly question the extent to which carbon dioxide emissions are affecting the planet.

Given his reliance on the same statements, researchers who track climate change communication think the media ought to change their approach when questioning the administrator.

For one thing, reporters could focus more on challenging Pruitt's comments, rather than pressing him to articulate his beliefs on climate change, said John Cook, a research assistant professor at the Center for Climate Change Communication at George Mason University who studies the spread of misinformation on climate change.

"What we've found is you can inoculate people against misinformation by explaining the techniques used to distort the facts," Cook said.

As an example, he pointed to Pruitt's press conference last year after President Trump announced the U.S. plan to eventually withdraw from the Paris climate agreement.

"In the press conference, [Pruitt] claims that global warming has stopped since the late 1990s. It's very clear from the data that global warming has continued and the last few years have been the hottest on record. What he's doing is cherry-picking, he's not looking at the full body of evidence. He pre-selects specific data and ignores any data that contradicts that global warming isn't happening," he said.

Other researchers suggested different questions journalists and others could ask Pruitt to circumvent his prepared statements on climate change.

Reporters could instead focus on economics, shared values and principles of stewardship, said Max Boykoff, director of the Center for Science and Technology Policy Research at the University of Colorado, Boulder.

Recently, Pruitt has spoken publicly about his belief — inspired by his religious faith — that mankind should be stewards of the land.

"If you get confrontational, you get shut down and you don't get to ask any more questions. So it is a very intricate dance, if you will. Part of the problem is it takes sustained engagement. It takes the opportunity to ask more than just one zinger," he said.

This mirrors the approach recently adopted by the Franciscan Action Network's executive director, Patrick Carolan, who sat down with Pruitt for well over an hour a couple of months ago to talk about the intersection of faith and environmentalism (Climatewire, March 15).

Rather than challenging the administrator on science, reporters could ask Pruitt about climate risk management, specifically about what a climate insurance policy might look like, Dana Nuccitelli said in an email.

Nuccitelli is an environmental scientist who writes a London Guardian column, "Climate consensus — the 97%," and blogs for Skeptical Science, a website that challenges climate skeptics' arguments. He noted that so far EPA has only reversed steps to create such climate insurance policies within the United States.

"Pruitt has suggested we don't know Earth's optimal temperature and that perhaps continuing global warming might be beneficial. These positions are contradicted by a vast body of climate impacts research, but the range of possible outcomes varies from bad to catastrophic," Nuccitelli said in an email. "While Pruitt doesn't believe the outcome will be terribly bad or catastrophic those outcomes are nevertheless in the range of possible scenarios, based on the body of research."

Nuccitelli warned against trying to debate climate science, because individuals who question the widely accepted research behind its causes are basing their statements in ideology and tribalism.

"Rejection of science is just a red herring to avoid discussing policy solutions. As a scientist that is a bit frustrating, but sometimes I think we just need to look past science denial and find the root of opposition of climate policies," he said.

Cook also described Pruitt's statements on climate change as echoing those of "run-of-the-mill denialists" on the internet. He and his colleagues found statements questioning mainstream climate science tended to fall into five main themes: Climate change isn't real, it isn't us, it's not bad, there's no hope, and general attacks on science and climate. These categories mirror the main ways those who favor climate action discuss the issue. Pruitt's comments on climate have focused on each of these five themes over the past year, according to Cook.

"You see this exact same pattern of behavior amongst anonymous bloggers or anonymous commenters. It's kind of striking that you have the head of the EPA regurgitating talking points you find on the comment threads on blogs," he said.

Talking in sound bites

The public may soon have more tools for analyzing climate change arguments from Pruitt and others within the administration, thanks to Cook's research.

He and his colleagues at George Mason are currently training a machine to recognize and flag misinformation on climate change. To do this, they are scraping what he described as "climate denialist" blog posts and conservative think tank posts. He is aiming to have it ready later this year.

"Eventually we're hoping this can be used to also inoculate against misinformation," Cook said.

Several reporters who cover Pruitt closely backed up researchers' concerns about how their colleagues were addressing climate change. At least two reporters noted that Pruitt tends to get the same questions about climate change but doesn't face much follow-up during interviews. They asked to not publish their names to speak freely about their beats.

"[Pruitt] talks in sound bites, he makes a stump speech for every interview," one environmental reporter told E&E News. "If you have been following closely, then you are prepared to challenge him on those talking points. Even Michael Barbaro at 'The Daily' [a New York Times podcast] is not prepared to challenge Pruitt. I generally feel that's strategic on the part of EPA's political team, that's why he's on Fox News so much."

The reporter noted that Barbaro specifically didn't challenge Pruitt's claims that the administrator had been tough on polluters, or follow up that much of the enforcement action EPA was now claiming credit for had been initiated under the Obama administration, something reporters who focus on EPA would have already known.

However, Bobby Magill, the president of the Society of Environmental Journalists, a professional organization for environmental reporters, praised the media's efforts to press the administrator.

"From what I've seen, [reporters] take a lot of opportunities to be very confrontational to him. The problem is it doesn't resonate very well," he said. "I think ultimately the best way for reporters to do their jobs is to report the erroneous information he presents and document that and report the facts."

Of course, getting better answers on climate change depends on Pruitt giving access to reporters, something his press shop allows sparingly.

Emails obtained by E&E News showed agency staff had prevented media access to a roundtable discussion during Pruitt's "state action tour" (Greenwire, Jan. 25). In another instance, EPA spokesman Jahan Wilcox shot down a proposal for a local Alaska radio station, KDLG, to interview Pruitt or another EPA official about the Pebble mine. "NO WAY, it's a liberal station in Alaska," Wilcox wrote in an email (Greenwire, Feb. 28).

"The EPA press team has been so antagonistic of environmental reporters or refusing to release information. They aren't getting the access they need, let alone getting interviews with Pruitt," said Lisa Hymas, director of the director of the climate and energy program at Media Matters for America, a progressive media watchdog group.

A recent analysis by Media Matters found that in his first year as administrator, Pruitt appeared 16 times on Fox News, compared with twice on ABC News and CNN, and once on MSNBC, CBS News and NBC News. Outside of television, Pruitt has strongly favored conservative talk radio or Christian media. He sat down for interviews with radio show hosts who challenge mainstream climate science, such as Brian Kilmeade and Michael Savage.

An example of one of these interviews was Pruitt's appearance on Fox News in September 2017. As "Fox & Friends" tracked the impending landfall of Hurricane Maria, the hosts invited EPA to talk about whether climate change was a factor in the storm.

"With climate we know certain things, we know the climate is always changing, we know humans contribute to it in some way. To what degree, to measure that with precision is very difficult, but what we don't know is are we in a position where it's an existential threat. Is it unsustainable with respect to what we see presently?" Pruitt said.

The administrator went on to talk about potentially hosting a public debate about climate science and noted that the United States had already made great strides in cutting emissions through technological advances.

"You would think that people would be happy with that, but many in Hollywood and many on the left aren't," host Kilmeade said in

response to Pruitt's remarks.

Pruitt also does speak with major national publications. In addition to his interview with "The Daily" podcast, Pruitt has also sat down with Reuters, USA Today, The Washington Post, Time and other outlets. Some of those interviews have been conducted by general political reporters, rather than the environmental reporters who follow Pruitt closely, said Hymas.

Hymas noted that TV networks focused on whether Pruitt believed in climate change but put much less emphasis on specific policies like repealing the Obama-era Clean Power Plan.

"I think overall the focus should be more on what he is doing, more than on what he believes," said Hymas. "I'd love it if bigger outlets [that] were thinking of [interviewing Pruitt] say, 'Let's have our climate reporter do it.'"

Cook of George Mason has his own questions he'd like the EPA administrator to answer.

"If I personally got to ask Pruitt a question, it would be, 'Why if he believes there's so much uncertainty over human's role in causing global warming, then why is he so certain that humans are not the primary contributor?' This is a hallmark of science denial: emphasis on uncertainty while being so certain in their own position," he said.

AP

<https://apnews.com/c848bbc6ebd44a5e89c9dfe2c8ff81bc/Oklahoma-court-removes-some-language-in-Pruitt-FOIA-ruling>

Oklahoma court removes some language in Pruitt FOIA ruling

3/19/18

OKLAHOMA CITY (AP) — The Oklahoma Supreme Court has removed language that was critical of the state attorney general's office in an Open Records Act case involving communications between then-Attorney General Scott Pruitt and major energy companies as well as the Republican Attorney General's Association.

The court ruled Monday that the trial judge's characterization of the office as an "abject failure" in complying with the law was "surplus and unnecessary."

The wording is in a 2017 ruling that ordered the attorney general's office to provide the Wisconsin-based Center for Media and Democracy with the records it had requested in 2015 involving Pruitt, who now heads the Environmental Protection Agency.

The state's high court upheld the remainder of the order that the attorney general's office must provide the records, which it did in February 2017.

E&E Greenwire

<https://www.eenews.net/greenwire/stories/1060076741/search?keyword=EPA>

Udall pushes Pruitt to cooperate on phone booth probe

By Kevin Bogardus, 3/19/18

Sen. Tom Udall (D-N.M.) is pressing U.S. EPA Administrator Scott Pruitt to cooperate with a congressional watchdog's inquiry about his secure phone booth.

Udall today sent a letter, obtained by E&E News, to the EPA chief raising the agency's lack of response to the Government Accountability Office. GAO has committed to offering a legal opinion on whether EPA appropriately spent funds to build a soundproof communications facility in Pruitt's office (Greenwire, Jan. 17).

Yet so far, EPA has not worked with GAO on the probe, according to the senator.

"My staff has asked GAO for the status of its legal opinion several times only to be informed that, to date, GAO has yet to receive any information from the EPA despite GAO reaching out to the EPA numerous times," Udall said in his letter.

"I am alarmed that the EPA has failed — for nearly three months — to cooperate with GAO's requests," he said.

A GAO spokesman confirmed that EPA has not responded to the watchdog office's questions related to Pruitt's phone booth.

"We have not yet received a formal response from EPA on this particular issue," GAO spokesman Chuck Young told E&E News.

Udall noted a recent report by The Washington Post that EPA spent roughly \$43,000 to install the phone booth, including the nearly \$25,000 contract for the booth itself (Greenwire, March 14).

He said that level of spending was in excess of the \$5,000 agencies are allowed to spend on furnishing or redecorating offices of political appointees, as stipulated by a provision in the fiscal 2017 omnibus appropriations package. If agencies spend more than that amount, they have to notify the relevant appropriations subcommittees that oversee them.

Udall is ranking member of the Senate Interior, Environment and Related Agencies Appropriations Subcommittee, which oversees EPA, and he said his panel did not receive any notice from the agency on Pruitt's phone booth.

The senator also said that while EPA has described the phone booth as a "Sensitive Compartmented Information Facility," or SCIF, the agency has told him the facility would not be certified by any national security agency. Further, EPA already has a SCIF that Pruitt could use.

"I am concerned that the agency may be misleading the committee and the public about the function of the privacy booth while also inappropriately classifying the expense as related to national security in order to avoid proper notification," Udall said in his letter.

"I urge you to immediately respond to GAO's requests so that GAO may complete their legal review as soon as possible."

The Hill

<http://thehill.com/policy/energy-environment/378832-court-questions-greens-challenge-to-epa-chemical-rule-delay>

Court questions greens' challenge to EPA chemical rule delay

By Timothy Cama, 3/16/18, 3:39 PM

A panel of three federal judges appeared skeptical at times on Friday in questioning attorneys representing environmentalists and Democratic states that are challenging the Trump administration's ongoing delay of a major chemical plant safety rule.

Two of the judges in the panel from the Court of Appeals for the District of Columbia Circuit questioned the litigants who are trying to restrict a new administration's ability to change a previous administration's policies and priorities.

But the panel was also at times skeptical of the Trump administration for requesting such a long delay — more than a year at this point — to reconsider the Environmental Protection Agency's (EPA) regulation. Judges asked whether the Clean Air Act restricts the time that a new administration can push back reconsideration of a previous administration's regulation.

The case, *Air Alliance Houston v. EPA*, concerns a major Obama administration regulation that was finalized shortly before President Trump took office.

It is meant to beef up emergency protocols for chemical plants and other facilities, through actions like making more information available to local first responders.

But shortly after current EPA head Scott Pruitt came into office last February, he accepted requests by the chemical industry and others to pause implementation of parts of the rule that were due to take effect that year.

He later instituted a 20-month delay of the rule, pushing it into 2019, while the EPA works on potential changes. Among the EPA's top concerns are that plants would have to release information that criminal actors could use to harm the facilities.

Environmentalists and Democratic states have sued, saying the EPA doesn't have the authority to unilaterally delay rules that long.

But Judge Brett Kavanaugh, nominated by former President George W. Bush, repeatedly argued for the right of a new administration to change its predecessor's policies.

"I have always thought that it's Administrative Law 101 that an agency can amend a prior rule by notice-and-comment rulemaking and that an effective date or a compliance date is part of a rule. Therefore, connecting those two things, an agency can always amend an effective date or compliance date in a prior rule by using notice-and-comment rulemaking," Kavanaugh said while Steve Wu, the deputy solicitor general for New York state, was presenting arguments.

"It just seems like that's good government, when an agency is presented with things that might be different from what they assumed, to think about that," Kavanaugh said.

Judge Judith Rogers, nominated by former President Bill Clinton, spoke less frequently, but also stood up for the right of a new president to take a different approach.

"A new administration comes in and there may be different ways of looking at information," she said.

"This is complicated. A new administration, they're trying to figure out where their offices are, who their assistants are going to be, what experts they're going to rely on. All that can't happen in 90 days," Rogers continued, referring to the initial three-month period that the Clean Air Act lets the EPA delay a rule.

Judge Robert Wilkins, nominated by former President Obama, spoke rarely, but did chime in that "as best as I can see," the restrictions on the agency's ability to delay rules did not apply to the rule at issue.

But some judges also showed skepticism of the Trump administration's actions.

Rogers pointed out that the Clean Air Act gave a three-month window for reconsideration.

"You have this provision on reconsideration, and at least Congress said it's limited to 90 days," she told Jonathan Brightbill, a Justice Department attorney representing the EPA.

Rogers was concerned that the EPA could indefinitely postpone the rule without amending it. "So, this could go on forever," she asked. "This rule never goes into effect?"

Trump administration agencies have faced numerous roadblocks in attempts to delay the previous administration's rules, with many courts saying the administration did not have the authority to do so.

In one such case, decided last year, the D.C. Circuit Court shot down an EPA attempt to delay a rule to limit methane emissions from oil and natural gas drilling.

E&E Climatewire

<https://www.eenews.net/climatewire/stories/1060076695/search?keyword=EPA>

Science reform eyed as path to unravel endangerment finding

By Scott Waldman, 3/19/18

The plan now being developed at U.S. EPA to restrict the science the agency uses could affect the crafting of regulations for years and become one of the most enduring parts of Administrator Scott Pruitt's legacy.

The plan under consideration is expected to limit the science used in EPA regulation to studies where the data could be published and reproduced. And while the agency is still considering the exact scope of its restrictions, both critics and supporters of the plan agree that it will fundamentally transform the way EPA uses research.

Supporters say it will prevent opaque "secret science" from being used to form regulations that could affect billions of dollars in economic activity. Opponents say it will eliminate from consideration much of the groundbreaking research the agency has used to protect Americans against pollution.

EPA's expected reform efforts are inspired by legislative measures boosted by Republican Rep. Lamar Smith of Texas, chairman of the House Committee on Science, Space and Technology and one of Congress' chief antagonists toward mainstream climate scientists. Smith has pushed legislation in recent years that would require new EPA regulations to be based on science that is reproducible and whose data is public. The most recent iteration of Smith's legislation, which is called the "Honest and Open New EPA Science Treatment (HONEST) Act," passed out of the House a year ago but has failed to advance in the Senate.

But a group of influential conservative voices, including Trump EPA transition team members and researchers from conservative think tanks, want Pruitt to go further. They want Pruitt — who recently told a group of conservatives gathered at the Heritage Foundation that the agency was working on the issue — to impose the requirement on all science used at the agency. Some even see it as a way to potentially go after the endangerment finding for greenhouse gases, which is the legal underpinning of EPA's climate regulations.

Science transparency can be used to go after the supporting documents for the endangerment finding, to evaluate its quality, said Pat Michaels, director of the Center for the Study of Science at the libertarian Cato Institute, which had a representative at the Heritage Foundation meeting. Michaels has long criticized climate models used in future predictions, and he believes that making data around the models transparent would prove his theory and make it easier to pick apart the models.

"We're all for rigorous examination of the models that are being used, especially the models for the endangerment finding," he said. "It's pretty apparent they're not working well, and if, for some reason, it's left to me and my few friends to point this out, I think it would be a good idea [and] that the agency should do it."

Regardless of whether it becomes a club against the endangerment finding, the directive could have significant impacts for studies now in place, said Bernard Goldstein, dean emeritus of the University of Pittsburgh Graduate School of Public Health and the former EPA assistant administrator for research and development in the Reagan administration. For example, air pollution rules must be re-evaluated by the agency every five years under the Clean Air Act, and the science data directive could sharply limit "just about everything" in those reviews, he said. That includes research from around the world, and there is little chance that scientists in Britain, France or Australia would turn over raw data to the Trump administration, he said.

"You're basically throwing out the data you have, that you've built up over many, many years," he said.

In pushing back against the estimates by EPA's career staff that the "HONEST Act" would cost more than \$250 million annually, Pruitt's EPA staff suggested that it would not apply to many studies that it would rely upon, according to a Congressional Budget Office analysis. That may suggest that the agency is now looking at crafting the plan to fit future regulations, rather than a retroactive look at those in place. That would mean Pruitt could roll out the plan in a dramatic public presentation as he did with his reform of the science advisory boards, but it would have a far smaller impact.

EPA didn't respond to a request for comment about the expected announcement.

Bad for industry?

Critics of the proposal say it would have lasting damage and might even earn industry's ire because it could easily be reversed by the next administration.

The requirement would privilege industry data, because many key studies upon which regulations were built are historical and don't have raw data available, said David Michaels, a George Washington University epidemiologist and former assistant secretary at the Occupational Safety and Health Administration in the Obama administration. That means EPA's regulatory, or deregulatory, agenda wouldn't be based on the best available science but only that which has been produced by industry and has raw data. One example, he said, of studies that would be excluded by data restrictions is some of the key research on lead, which goes back years, and which Pruitt has said is a priority for the agency this year.

"Industry would provide the studies they've done that show the effects are minimal or less, and they would provide the raw data," he said. "But some of the historical studies which have found a higher risk associated with this exposure might not be available, and so this sort of process could support that rolling back of regulations even though good science would tell you not to do that."

Even if the science reforms are issued through a directive, and it is wiped out by the first post-Trump EPA administrator, it has the potential to create lasting damage for years, he said. That sort of back-and-forth creates an uncertainty that even industry will oppose, he said.

"If this is being used to alter regulation, then those take many years to change, and that's a concern," he said. "It's bad for public health; it's bad for industry, which needs some certainty."

Pruitt mentioned that a plan was forthcoming to a group of conservatives gathered at the Heritage Foundation last week. Some of those who were there, or whose group was in attendance, want Pruitt to go further than the "HONEST Act."

"I hope that it's tighter than that," said Steve Milloy, a former coal executive and member of Trump's EPA transition team who has pushed the agency to impose such restrictions for years. "I hope that EPA does not regulate at all unless the underlying scientific data can be made available, and I don't think there is any legislation yet that is that strong."

Milloy said the final plan would likely not go as far as he would like, because some industry groups, including the pharmaceutical industry, are lobbying against it. He said his goal is that EPA does not rely on any data that cannot be challenged.

"If they don't want to defend their data, I'm hoping that is the last we see of it," he said.

Critics of the plan say the greatest danger of the plan, and perhaps its most problematic legacy is its ability to quickly spread to other federal agencies. It's likely that if proponents see the plan put in place at EPA, they'll seek it in the Federal Drug Administration or Department of Agriculture, anywhere that government has imposed regulations, said Goldstein, the former EPA official in the Reagan administration. It would also interfere with ongoing regulatory efforts that have been underway for years, he said, wiping out the potential use of an unprecedented amount of essential research.

"This scares the hell out of me and has for quite some time," he said. "You can just about pick any agency that's using science on regulatory things and say, 'Hey, if we get away with it at EPA, we can do it for any of these.'"

AP

<https://apnews.com/ee08eaa6cbd84f11a59e5afb2f34a4/EPA-wants-mine-company-to-help-pay-for-Superfund-study>

EPA wants mine company to help pay for Superfund study

3/17/18

DURANGO, Colo. (AP) — The U.S. Environmental Protection agency wants a mining company to pay for a potentially costly investigation of underground water flows at a southwestern Colorado Superfund site to help the agency devise a cleanup plan.

The EPA on Thursday ordered Sunnyside Gold Corp. to study part of the Bonita Peak Mining District. The district includes the Gold King Mine, where agency workers inadvertently triggered the release of 3 million gallons (11.3 million liters) of wastewater tainted with heavy metals in 2015.

The spill tainted rivers in Colorado, New Mexico, Utah and on Native American lands.

Sunnyside doesn't own the Gold King but has other mining property within the Superfund site.

The EPA has said previous work at one of Sunnyside's mines may have redirected wastewater to other openings, where it escaped into tributaries of the Animas River.

Sunnyside spokesman Kevin Roach said the company is not the cause of the water quality problems in the Animas.

Sunnyside spent \$30 million over 30 years on reclamation in the area and without that work, pollution would have been worse, Roach said.

Roach said Sunnyside wants to put its resources into improving water quality "rather than pointless studies or litigation."

He said the company is reviewing the order. It has until next week to ask the EPA for a meeting to discuss it.

Rebecca Thomas, the EPA's project manager for the Superfund site, told The Durango Herald the agency needs a better understanding of the area before it can start cleanup work.

"Until we can understand how water flows through that system, it will be difficult to put forward a plan to address contamination," she said.

Thomas said the agency decided Sunnyside was liable for conducting and paying for the investigation based on its past ownership and operations in the area.

The Bonita Peak Mining District Superfund site includes 48 mining-related sites and was designated in 2016, a year after the Gold King spill.

NPR

<https://www.npr.org/2018/03/17/593546626/former-coal-lobbyist-on-tap-for-no-2-spot-at-epa>

Former Coal Lobbyist On Tap For No. 2 Spot At EPA

By Rebecca Hersher, 3/17/18, 5:00 AM

President Trump's nominee for deputy administrator of the Environmental Protection Agency, Andrew Wheeler, has spent much of his career working for less oversight from the agency.

A longtime aide to Sen. James Inhofe, known for his climate-denying antics on the floor of the Senate, Wheeler worked on environmental legislation for more than 15 years in various roles on the Senate Committee on Environment and Public Works. He helped to defeat a 2008 climate bill before leaving to be a private consultant and lobbyist.

That experience will serve Wheeler well as deputy administrator, his supporters argue, as the EPA continues to roll back Obama-era rules and regulations, and the agency works more closely with industry.

"I know where the laws are drafted," Wheeler said when he appeared before that same committee for his confirmation hearing last year. He joked with Senators and seemed at-ease answering questions from his old colleagues, even as Democrats raised concerns about his past work as a lobbyist.

Since 2009, Wheeler has represented the interests of some of the largest fossil fuel companies in the U.S. as a consultant and lobbyist, and national environmental groups including the Natural Resources Defense Council and Sierra Club oppose his nomination. According to an analysis of public documents by ProPublica, Wheeler has worked as a registered lobbyist for, among others, a major uranium mining company, one of the largest coal companies in the country and a refrigerant manufacturer.

Each of the companies has worked to shape EPA regulations in their favor in recent years.

The uranium mining company, Energy Fuels Resources Inc., is based in Colorado. Last year, the company lobbied to shrink Bears Ears National Monument, which is adjacent to one of the company's uranium processing mills. The refrigerant manufacturer, ICOR International, hired Wheeler to lobby Congress and the EPA for less stringent ozone regulations.

Following his nomination last fall, the Sierra Club's legislative director Melinda Pierce said Wheeler is "unfit for the job as Deputy EPA Administrator, given his obvious conflicts of interest working for the coal industry."

Wheeler also lobbied on behalf of utility giant Xcel Energy and has lobbied or consulted for multiple companies with interests in expanding the market for ethanol, including Growth Energy, the trade group for ethanol producers. The EPA is responsible for setting fuel requirements that affect the market for ethanol.

Xcel also has a complex relationship with the EPA. The company has invested heavily in renewable energy since the agency passed a sweeping electricity regulation which led states and utilities to make long-term plans for transitioning to clean energy. The EPA is now moving to repeal the so-called Clean Power Plan, but many states have still require utilities, including Xcel, to follow through on transitioning from dirtier fuels like coal to cleaner ones like wind, as the public radio collaboration InsideEnergy has reported.

Asked to comment on how Wheeler's past lobbying and consulting work might affect his approach to helping run the EPA, EPA spokesperson Liz Bowman said "Mr. Wheeler – like all political nominees – is committed to following the ethics advice of career officials at EPA and will recuse himself as needed, based on the advice of those experts."

The Senate panel's top-ranking Democrat, Sen. Tom Carper, said earlier this year that he had asked Wheeler specifically about his work with the coal company Murray Energy. The company's CEO Bob Murray has long fought environmental and climate regulations. Last year, Murray sent a memo to Pruitt laying out an "action plan" that included repealing limits on mercury emissions and reversing the agency's so-called endangerment finding that greenhouse gas emissions are dangerous to public health.

Murray also pushed for the administration to withdraw the U.S. from the Paris Climate Agreement, which President Trump announced he would do last year.

Speaking at a hearing, Carper said he had spoken to Wheeler about his relationship with Murray, and found Wheeler's explanations encouraging:

"I have met personally with Mr. Wheeler twice, and I have asked him directly whether he was involved in writing Mr. Murray's proposal. He assured me he was not. He told me that one of Murray Energy's priority issues he worked on was securing health and other benefits for retired miners. Moreover, he also assured me that he views EPA's legal authority to regulate greenhouse gas emissions, which is based on the 'endangerment finding,' as settled law. I have no reason to doubt Mr. Wheeler's assurances that at least on the question of the endangerment finding, he holds a view that is distinct from Bob Murray's."

Asked if Wheeler shared Murray's support for items in the action plan, Bowman said "Mr. Wheeler supports the president's decision to withdraw from the Paris agreement."

Wheeler has worked at the EPA before, as a special assistant in the agency's Office of Pollution Prevention and Toxics in the early 1990s. His focus was on regulating toxic chemicals — at the time, the EPA was working to update the agency's "early warning" system for keeping track of new chemical hazards.

Wheeler helped draft guidelines about what information chemical companies were required to disclose to the EPA.

That work may prove to be relevant to running today's EPA. More than 20 years later, the agency is in the midst of implementing a sweeping law passed under the Obama administration that changes many chemical reporting requirements. How that law is implemented will determine the EPA's power to enforce chemical pollution limits for the foreseeable future.

For example, the Trump administration rewrote and Obama-era proposed rule to narrow the number of chemicals the agency will review for safety hazards, excluding chemicals like flame retardants that are present in a lot of plush furniture, but are no longer used in manufacturing new products.

Carper's office did not respond to questions about the current timeline for Wheeler's confirmation, which has been stalled since he was nominated last year.

E&E Greenwire

<https://www.eenews.net/greenwire/stories/1060076735/search?keyword=EPA>

Trump EPA hires enviro

By Kevin Bogardus, 3/19/18

President Trump's U.S. EPA, known for its roster of aides linked to industry, has recently hired a prominent lawyer from an environmental group.

Sean Dixon, formerly senior attorney with Riverkeeper, started at the agency this month as a senior policy adviser to Alexandra Dapolito Dunn, the Region 1 administrator in the Boston office.

Dixon spent four years at the environmental organization, which is focused on protecting New York waterways like the Hudson River, according to his LinkedIn profile. He was part of several of the group's protest campaigns and litigation, including efforts that at times have been aimed against EPA.

"We do think this is a bold move on Sean's part, moving over to EPA. He did great work for us at Riverkeeper, and we're counting on him to do the same thing at EPA," Paul Gallay, president of Riverkeeper, told E&E News.

EPA spokeswoman Liz Bowman said the agency already has several "environmentalists" on staff as Trump appointees, referring to top aides who came from state regulatory agencies or their representative trade associations.

"EPA has a number of environmentalists as political appointees, including, but not at all limited to: Region 1's Alex Dunn was from the Environmental Council of the States and the Association of Clean Water Administrators; EPA's Office of Water's Dave Ross served two state environmental protection agencies; and EPA's General Counsel Matt Leopold came from the Florida Department of Environmental Protection," Bowman said in a statement to E&E News.

"These leaders — along with many other political appointees at EPA — have been serving environmental protection efforts at the state and local level for years and we are proud to have them among us."

Like other green groups, Riverkeeper has been vocal in its criticism of the Trump administration.

It has pushed back against the White House's proposed budget cuts for EPA, urging people to call Congress last year to protect the agency from those cuts. It also called on the public to support the Waters of the U.S. rule, targeted for repeal under Trump, and said the Senate should have rejected the nomination of Scott Pruitt, Trump's EPA administrator.

Dixon has other environmental experience. Before joining Riverkeeper, he was an attorney at Clean Ocean Action. He also has been a fisheries observer for NOAA.

He earned a Bachelor of Arts in marine biology and earth sciences from Boston University and a law degree from Pace University, where he has also been an adjunct law professor.

AP

<https://apnews.com/ce146aa6168940c6a5ee39762019dcc7/Effort-aims-to-develop-forest-at-old-lead-mining-site>

Effort aims to develop forest at old lead mining site

3/18/18

FREDERICKTOWN, Mo. (AP) — A portion of Missouri's Old Lead Belt region could soon be turned back into a forest.

The U.S. Fish and Wildlife Service and the Missouri Department of Natural Resources are working together to restore a part of the Madison County Miles Superfund Site, St. Louis Public Radio reported. The area is near Fredericktown, about 90 miles southwest of St. Louis.

Lead mining in the 19th century contaminated the area, prompting placement on the Environmental Protection Agency's National Priorities List in 2003.

State and federal officials planted 550 trees in November with the goal of developing a flood plain forest that could improve water quality, recreational opportunities and wildlife habitat.

"It's important for people who are recreating in the river, whether they are fishing or floating," said John Weber, environmental contaminants specialist for the Fish and Wildlife Service. "It's important for downstream species of mussels. There's some species listed on the endangered species list that the U.S. Fish and Wildlife Service is concerned about."

Fredericktown officials are assisting in the effort, which is expected to expand in coming years to other areas.

"I think it's important for current and future residents to restore these areas back to a natural state," said John Bennett, Fredericktown's former city manager who is developing a plan to clean up the local watershed.

Trustees of the Natural Resource Damage Assessment and Restoration Program, part of the U.S. Department of the Interior, allocated \$150,000 for the effort. In addition to planting trees, volunteers will help remove invasive species of plants, such as the autumn olive and the bush honeysuckle.

Weber said heavy metals and mining are "a really big part of the culture and heritage of Madison and other counties in southeast

Missouri.

“I like to think of it as a nice way for this story to conclude,” he said. “If we can take a previously contaminated site and make it back into viable habitat that serves the needs of people and wildlife, then we’ve done a good thing.”

Daily Caller

<http://dailycaller.com/2018/03/16/revoke-california-clean-air-waiver/>

Revoke California’s Clean Air Waiver (*Op-Ed)

By Ronald N. Langston, 3/16/18, 3:29 PM

America is a big country, with over 4 million miles of roadways. For a population that tops 327 million, it shouldn’t be a surprise that there are probably now well over 270 million registered vehicles.

It is important as a matter of national public policy the United States Environmental Protection Agency (EPA) and National Highway Transportation Safety Administration (NHTSA) are presently considering revisions to fuel economy standards. These revisions present EPA a significant opportunity to rescind California’s Clean Air Act waiver. For 45 years, this waiver has allowed California to set stricter regulations than the federal government and enabled the right to mandate the sale of electric vehicles.

On paper, electric vehicles (EVs) look great, but they are expensive, requiring a considerable income for purchase and maintenance. For example, 83 percent of EV rebate recipients had incomes over \$100,000 in California, while the average income for a Tesla owner is a whopping \$320,000. About 90 percent of the federal tax credits for EVs went to those in the top 1/5 of income brackets. To make the high costs of an EV more palatable, 45 states and the District of Columbia offer financial incentives for certain hybrid and/or electric vehicles, which can range from tax credits or rebates to fleet acquisition goals or exemptions from emissions testing.

Black and Hispanic neighborhoods are less likely to be recipients of such incentives. This kind of “green privilege” is only available to those who can provide upfront investments on EVs, which are financially out of reach for most Americans. Even more unfair,, 31 states faced budget shortfalls in 2017, with many cutting programs for the poor and middle class to balance budgets — all while tax subsidies to help the wealthy purchase EVs continue unabated.

Contrary to popular thought, EVs aren’t necessarily environmentally competitive. EV subsidies are far more than the savings of EVs to the social cost of carbon. The higher market price of California’s Zero Emissions Vehicle (ZEV) credits in 2018 make it nearly impossible for EVs to displace carbon cost effectively. At the current ZEV credit market values, an EV would have to be driven more than 1 million miles to displace enough carbon to equal the value of its ZEV credit subsidy. Plus, even if a battery-powered car doesn’t produce emissions, it is likely that the power plant making electricity to charge the car’s batteries does.

While state budgets are being squeezed, mass transit and road funds are being diverted to subsidize electric vehicle infrastructure. These are silly and dangerous decisions when American infrastructure is crumbling, and trillions of dollars of investment are needed to turn it around. For example, California, one of the leading states pushing EV incentives and expansion, earned a D+ in the 2017 Infrastructure Report Card. The state alone has 195,834 miles of public roads, with 50 percent in poor condition. Instead of spending \$2.5 billion on charging stations, why doesn’t the state focus on deteriorating roads that get the rest of its residents to home and work?

In the end, people should not be pressured to buy EVs, particularly if choices are costly and environmentally unproven. All tax credits and EV subsidies should be means-tested so that less of the benefit goes to the rich, and so less-fortunate people (who are also less politically influential) can enjoy the other benefits of EV driving like carpool lanes and special parking spaces.

Continuing California’s waiver will mean expensive Electric Vehicle (EV) mandates that will send tax dollars in the wrong direction — to the rich, while programs for underrepresented populations are crushed by state budget deficits. The Trump administration should support more balanced competition across the energy sector to reduce air pollution and not favor one technology over another, especially one that benefits subsidies for the rich. The solution is simple: the EPA should revoke California’s 45-year old Clean Air waiver.

New Science Panel May Bolster EPA's Chemical Policy Defense (Corrected)

By Pat Rizzuto, 3/19/18

Scientific advice that a new external committee will give the EPA could improve the agency's chemical policies and help it defend decisions under court challenge, policy analysts say.

"It's vitally important that EPA has strong, independent scientific advice to inform its decisions," Trish Koman, a University of Michigan environmental health researcher and former Environmental Protection Agency scientist, told Bloomberg Environment.

The EPA told Bloomberg Environment March 13 it's poised to announce the slate of individuals selected to serve on its new Science Advisory Committee on Chemicals. Congress required the agency to convene the committee when it amended the Toxic Substances Control Act in 2016. The agency has yet to schedule the panel's first meeting.

Nevertheless, attorneys, consultants, academics, and environmental health organizations suggested to Bloomberg Environment a slew of topics they'd like EPA to bring before its new advisers and that are relevant to chemical safety and ongoing litigation over the agency's implementation of TSCA. Those topics include identifying workplace chemical uses, updating risk analysis tools, and helping EPA get information and concerns from exposed populations.

Useful Imprimatur

Asked if the advisory committee's input would help EPA develop legally defensible chemical decisions, Maureen Gorsen, a former California EPA attorney now working at Alston & Bird, said: "Of course it would." Gorsen now helps regulated industries deal with chemical and other environmental issues.

If the decision based on that advice is challenged in court, the imprimatur of the outside advisers can offer evidence that the agency used a scientifically credible approach, Jim Aidala, senior government affairs consultant with Bergeson and Campbell P.C. said.

Getting and following a science advisory committee's recommendations, however, doesn't guarantee all parties will agree with the EPA's final decision nor that EPA will make the right decision, Aidala added.

The new chemical advisory committee will consist of about 18 industry, non-profit and other individuals with expertise in human health and ecological risk assessment, epidemiology, pediatrics, toxicology and other scientific disciplines.

The panel will meet three to four times a year for two years, and its charter can be extended.

Some researchers are skeptical the committee will improve the agency's decisions. A directive EPA Administrator Scott Pruitt issued last October will prevent leading experts who receive EPA grants from serving on the new committee, Koman and other researchers said.

"It appears this administration does not care for the advice of unconflicted scientists on the science and hopes to alter advisory panels to get the advice it wants to hear, rather than changing its policy decisions based on the science," said Veena Singla, associate director for science and policy at the University of California San Francisco's reproductive health and environment program.

Unclear Definitions

Amended TSCA requires the agency to conduct more risk-based analyses than the original law required, and it strictly limits the agency's time to do these more complex chemical evaluations.

These include decisions such as whether: new chemicals pose or may pose an unreasonable risk that should prevent them from being manufactured or require some controls; existing chemicals raise sufficient health or environmental concerns to warrant closer scrutiny; and an existing chemical should be labeled, restricted, banned, or otherwise controlled to prevent potential harm.

The amended law requires the EPA to make such decisions while considering criteria the statute doesn't clearly define, said Aidala, who helped implement the original chemicals law during the Clinton administration.

Ambiguous statutory language is typical, because clearly defining decision criteria could prevent legislators from reaching the

consensus needed to pass laws, he said. Allowing agencies to interpret the law also allows policies to evolve as new science emerges, Aidala said.

Conditions of Use

The undefined criteria include evaluating risk under a chemical's "conditions of use," said Aidala, and Paul DeLeo, a principal with Integral Consulting Inc.

The law defines them as "the circumstances, as determined by the administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used or disposed of."

This "is a huge policy area that needs to be addressed," DeLeo said.

The agency's interpretation of TSCA that assumes its giving it discretion to consider some—but not all—uses of a chemical already is being challenged by environmental health groups in [Natural Resources Defense Council v. EPA](#) and [Safer Chem Healthy Families v. EPA](#).

Science v. Policy

Evaluating a chemical's risks integrates science and policy, Aidala said.

If the advisory committee has occupational experts they could, for example, help the agency identify workplace uses of a chemical that could result in workers being exposed to it, he said. The committee could identify workplace uses that would constitute 90 percent or more of workers' exposures, Aidala said.

EPA's policy decision would be whether it's sufficient to include 90 percent, 95 percent, or some other percent of exposures stemming from its conditions of use, he said.

Risk Strategies, Tools

Steve Owens, assistant administrator for chemical safety and pollution prevention during the Obama administration, and DeLeo urged the agency to seek advice on how to apply the agency's general risk assessment guidance to the chemical analyses required by TSCA.

Environmental groups, for example, have criticized the agency's plans to assess the risks of 10 chemicals in commerce, said Owens, an attorney with Squire Patton Boggs. Such groups have said the agency's plans omitted critical ways people are exposed to the chemicals.

Early advice from the advisory committee on how to prepare scientifically credible risk assessment plans, or "scoping documents," could help the agency prepare future plans, Owens said.

EPA has many risk assessment models that predict a chemical's toxicity and exposure, yet many of these are out of date, DeLeo said.

The committee could help the agency decide which models and other risk analysis tools need to be updated, he added.

Vulnerable Groups

The advisers should offer strategies to help the EPA assess people's total, or "aggregate," exposure to a chemical it is evaluating as well as the cumulative exposure people would have to different chemicals that have similar effects on people's health, said Koman. A member of the American Public Health Association, Koman elaborated on such suggestions in [comments](#) the association submitted to the EPA.

An individual may be exposed to a chemical at work, through consumer purchases, and/or as a member of a community that inhales or ingests the chemical, said Koman, who previous worked with EPA advisory committees while working in the agency's air office. EPA must consider the full range of exposures, she said.

The total exposure to the chemical from food, water, and air also must be considered, Singla said pointing to [comments](#) she and other scientists submitted to the EPA.

Instead, the agency's risk evaluation plans for 10 chemicals focus on narrow, limited exposures, Koman said.

The agency also must take a more scientifically-based approach to identify the susceptible and highly exposed populations TSCA requires it to consider, Koman and Singla agreed.

The National Academies of Sciences, Engineering, and Medicine has offered advice on ways the agency could do that, Koman and Singla told Bloomberg Environment. EPA's advisers could offer thoughts on whether the agency is following that advice, Koman said.

Pruitt's Directive

The agency could should hear the perspective of exposed populations, Koman and Singla said. Including community representatives or scientists that have worked with them on the advisory committee could do that, they said.

Unfortunately, Koman said, Pruitt's [directive](#), which bars scientists that have received EPA grants from serving on science advisory boards, could block the agency from hearing communities' perspectives.

Researchers that receive EPA grants often conduct their research in consultation with the communities with which they work, she said. The research provides information and ideas relevant to issues advisory committees examine, she said.

"Pruitt's requirements bar people with expertise on topics relevant to the agency from serving on advisory committees," Koman said.

In his directive, Pruitt said, researchers receiving the agency's grants should be barred, because receiving EPA money while offering it advice "can create the appearance or reality of potential interference" with the ability to independently and objectively serve as a federal advisory committee member.

But the EPA's Inspector General said in a 2013 [report](#) that grants do not equate with conflicts of interest.

"When a scientist is awarded a government research grant through an investigator-initiated peer-reviewed competition, there generally should be no question as to that scientist's ability to offer independent scientific advice to the agency" the Inspector General wrote quoting a Peer Review [policy](#) issued by the Office of Management and Budget during the George W. Bush administration. OMB oversees federal agency policies and evaluates the costs and benefits of proposed regulations.

Nancy Beck, EPA's deputy assistant administrator for chemical safety and pollution prevention, worked as a toxicologist and risk assessor at OMB when it crafted that policy.

E&E Daily

<https://www.eenews.net/eedaily/stories/1060076685/search?keyword=EPA>

Perry, trove of admin officials return to testify on Hill

By Manuel Quinones, 3/19/18

Energy Secretary Rick Perry and a trove of other Trump administration officials will be back on Capitol Hill this week to defend the White House's fiscal 2019 budget request.

Last week at a House Appropriations Committee hearing, Perry defended proposed cuts for renewable energy and efficiency programs and pointed to earlier poor management when lawmakers asked whether he would ensure promising renewable and efficiency technologies would make it out of the laboratory.

"One of the reasons that these programs have been criticized in the past ... my observation, I think this is the reason why ... is because they haven't been managed that well," he said.

There are several issues Perry has not addressed in detail that are priorities to members of the Senate Energy and Natural Resources Committee, where the secretary will appear, including the Department of Energy's plans for meeting efficiency standard deadlines.

Perry also could see questions about plans to reorganize spending for carbon capture research and rebuilding efforts in Puerto Rico.

Undersecretary Mark Menezes and leaders of DOE's applied energy offices are scheduled to appear at a separate House Appropriations Committee hearing.

The Office of Energy Efficiency and Renewable Energy is slated for an approximate 65 percent cut under President Trump's plan, while the nuclear energy office could see a reduction of about 25 percent.

Assistant Secretary for Fossil Energy Steven Winberg is expected to take questions on both carbon capture priorities and efforts to develop small modular coal units.

Also testifying is Bruce Walker, DOE assistant secretary for the Office of Electricity Delivery and Energy Reliability, which is planning to break off a separate cybersecurity branch. The budget request calls for \$96 million for the new Office of Cybersecurity, Energy Security and Emergency Response.

Nuclear Regulatory Commission

Also appearing on the Hill this week will be the three members of the Nuclear Regulatory Commission.

The commissioners will likely be questioned about the NRC's initiative to transform its culture and regulatory framework in response to industry changes and the development of advanced nuclear technology (Greenwire, March 15).

In at least one of the hearings, they will also face questioning about the NRC's work on licensing the Yucca Mountain nuclear waste site.

Rep. John Shimkus (R-Ill.), a senior member of the House Energy and Commerce Committee, has been a key supporter of the project and has pushed for appropriations as well as legislation to expedite it.

NRC members might not have much to say, though. Their agency has been essentially blocked from moving forward with licensing by the Nevada congressional delegation.

What little they have been able to advance has been through technical meetings related to the document database that would be used in the case of licensing being resumed (Greenwire, Feb. 26).

NOAA

On Wednesday, House appropriators will take up NOAA's budget, which would be cut by nearly 20 percent in fiscal 2019 under Trump's plan.

The National Weather Service would be particularly hard hit, losing 355 jobs, including 248 forecasters and others who provide support services.

Fourteen months into Trump's presidency, NOAA still has no permanent administrator, with the Senate yet to vote on the nominee, AccuWeather CEO Barry Myers.

Trump's choice for the No. 2 position at NOAA, retired Rear Adm. Timothy Gallaudet, will defend the budget.

The White House blueprint would set NOAA's overall budget at \$4.56 billion in 2019, a decrease of \$1.08 billion from current levels.

The budget also would scrap NOAA's Coastal Zone Management grants, the Sea Grant program, the National Estuarine Research Reserve System, the Pacific Coastal Salmon Recovery Fund and the agency's Office of Education, among other reductions.

In its budget document, administration officials said the budget would allow NOAA to "sustain core functions and enable critical enhancements" while making tough decisions to cut some programs.

Agriculture

Agriculture Secretary Sonny Perdue will address his agency's request before House appropriators Wednesday.

Perdue is likely to face questions about the spending plan's \$5.8 billion cut in discretionary funding, to \$18 billion, in fiscal 2019.

Specific aspects of the proposal, such as cuts to crop insurance subsidies and conservation programs, as well as a new food delivery

program for the Supplemental Nutrition Assistance Program, could raise objections from both Democrats and Republicans.

The administration's proposal to slash the federal subsidy for crop insurance premiums from 62 percent to 48 percent has fallen flat with lawmakers on the House and Senate agriculture committees in charge of writing the 2018 farm bill.

Perdue has distanced himself from that proposal, telling reporters last month that he defended farmers' interests in talks with the White House Office of Management and Budget ahead of the budget's release (Greenwire, Feb. 22).

A proposal to eliminate the Conservation Stewardship Program and the Regional Conservation Partnership Program hasn't gone much further.

And the proposal to devote some of SNAP to new food delivery service — using the buying power of the government to reduce costs — has been widely panned, although Perdue in a news conference last month urged advocates not to dismiss the idea out of hand.

The proposed cuts would affect the Office of the Inspector General as well. Inspector General Phyllis Fong told lawmakers last week her agency would lose 50 employees and see a "significantly decreased level of effort" if Congress approves the budget request as is.

The OIG would likely conduct 16 percent fewer audits and 16 percent fewer investigations, Fong said, if the cuts are distributed equally. The return to the government from the OIG's work could fall by about \$50 million, she said.

Rep. Sanford Bishop (D-Ga.), ranking member of the House Agriculture Appropriations Subcommittee, said the budget request would "adversely impact farmers, rural communities and those in need of government assistance."

EPA, others

Also on the Hill this week will be leaders of the National Nuclear Security Administration, the Department of Commerce and the military.

Lawmakers on both sides of the aisle want U.S. EPA Administrator Scott Pruitt to testify on his agency's request. House Energy and Commerce lawmakers will host him on April 26.

The panel will host Perry on April 12 and members of the Federal Energy Regulatory Commission on the 17th.

Reporters Sam Mintz, Christa Marshall, Marc Heller, Kevin Bogardus and Rob Hotakainen contributed.

Schedule: The House Appropriations subcommittee hearing on the Commerce budget is Tuesday, March 20, at 9:30 a.m. in 2359 Rayburn.

Witness: Commerce Secretary Wilbur Ross.

Schedule: The House Appropriations subcommittee hearing on the National Nuclear Security Administration budget is Tuesday, March 20, at 10 a.m. in 2362-B Rayburn.

Witnesses: Phil Calbos, principal assistant deputy NNSA administrator for defense programs; Lisa Gordon-Hagerty, administrator of the NNSA; and Dave Huizenga, principal assistant deputy NNSA administrator for defense nuclear nonproliferation.

Schedule: The House Energy and Commerce subcommittee hearing on the Nuclear Regulatory Commission is Tuesday, March 20, at 10:15 a.m. in 2123 Rayburn.

Witnesses: TBA.

Schedule: The House Natural Resources subcommittee hearing on Indian affairs and insular areas budget is Tuesday, March 20, at 10:30 a.m. in 1234 Longworth.

Witnesses: TBA.

Schedule: The Senate Energy and Natural Resources Committee hearing on the Energy Department budget is Tuesday, March 20, at

10 a.m. in 366 Dirksen.

Witness: Energy Secretary Rick Perry.

Schedule: The House Appropriations subcommittee hearing on the NOAA budget is Wednesday, March 21, at 10 a.m. in H-309 Capitol.

Witness: Retired Rear Adm. Timothy Gallaudet, assistant Commerce secretary for oceans and atmosphere.

Schedule: The House Appropriations subcommittee hearing on the Agriculture budget is Wednesday, March 21, at 1:30 p.m. in 2362-A Rayburn.

Witness: Agriculture Secretary Sonny Perdue.

Schedule: The Senate Environment and Public Works Committee hearing on the NRC is Wednesday, March 21, at 10 a.m. in 406 Dirksen.

Witnesses: TBA.

Schedule: The House Natural Resources subcommittee hearing on the Bureau of Reclamation and power administrations is Wednesday, March 21, at 2 p.m. in 1324 Longworth.

Witnesses: TBA.

Schedule: The House Appropriations subcommittee hearing on the applied energy budget is Thursday, March 22, at 9 a.m. 2362-B Rayburn.

Witnesses: Edward McGinnis, principal assistant Energy secretary for nuclear energy; Mark Menezes, DOE undersecretary for energy; Dan Simmons, principal deputy assistant secretary for energy efficiency and renewable energy; Bruce Walker, assistant Energy secretary for electricity delivery and reliability; and Steven Winberg, assistant Energy secretary for fossil energy.

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http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=129919564&item=408&prod=deln&cat=AGENCY

Ammonia Vapor Cases Move in Different Directions

By Steven M. Sellers, 3/19/18

Environmentalists got mixed results in two recent rulings over the emission of dangerous ammonia gases from factory farms and industrial facilities.

A federal court in California approved a settlement between the EPA and a vintner over anhydrous ammonia emissions from its winemaking facility. But a federal court in Arizona ruled a jury will have to decide whether ammonia emissions from two massive chicken farms violated the same federal law.

The decisions are the latest in litigation to rein in dangerous, and controversial, emissions from large farms and factories under a [federal hazardous waste reporting law](#) that facilitates community responses to chemical emergencies.

The Emergency Planning and Community Right-to-Know Act (EPCRA) imposes reporting requirements on industries on the storage, use, and release of hazardous chemicals.

Ranchers and farmers argue it wasn't intended to include reporting of animal waste emissions, despite an EPA rule to the contrary. A bill pending in Congress would [exempt](#) small farms from the reporting requirements.

In the California case, the U.S. District Court for the Eastern District of California approved March 13 a \$330,000 settlement between Gibson Wine Co. and the EPA over the winemaker's release of ammonia gas from its plant in Sanger, Calif.

That case stems from a 2012 release of anhydrous ammonia from Gibson's refrigeration system that killed a worker and required evacuation of the site.

EPA alleged that Gibson failed to promptly notify the [National Response Center](#) of the hazardous substance release, as required by EPCRA and other federal hazardous waste laws.

The consent decree approved by the district court also imposes equipment, training, and reporting obligations on the winemaker.

The Arizona case, however, will be decided by a jury, the U.S. District Court for the District of Arizona ruled March 14.

Don't Waste Arizona Inc., an environmental group, contended that manure from millions of chickens at two factory farms operated by Hickman's Egg Ranch Inc. emitted massive amounts of ammonia. Those emissions mandated reports by Hickman's under EPCRA, the plaintiffs said.

But an expert for Hickman's calculated that emissions were below EPA thresholds at the boundaries of the properties, potentially exempting the farms from EPCRA's reporting mandates.

That factual dispute was enough to deny a dismissal bid by plaintiffs, the court said. Judge Anthony W. Ishii wrote the opinion in the California case.

Dufour Law and Campagne & Campagne represented Gibson Wine Co.

Judge G. Murray Snow wrote the opinion in the Arizona case.

The Shanker Law Firm represented Don't Waste Arizona. Burch & Cracchiolo represented Hickman's.

Politico

<https://www.politicopro.com/energy/article/2018/03/proposals-for-biofuel-credit-price-cap-alarm-corn-growers-423551>

Proposals for biofuel credit price cap alarm corn growers

By Eric Wolff 3/16/18, 6:28 PM

White House-backed negotiations to alter the biofuels program may include a trigger mechanism that could kick in to cap prices for biofuel credits — but that proposal is hitting heavy resistance from the corn industry.

Talks between refining and agricultural groups to change the Renewable Fuel Standard have made modest progress in recent days, with participants discussing seeking an EPA waiver to expand sales of 15 percent ethanol gasoline blends. That plan would also provide an incentive for those sales by attaching a multiplier to increase the number of Renewable Identification Numbers to help lower the costs for refiners.

The new discussion around a triggered price cap is an attempt to overcome opposition to refiners' proposal for a fixed two-year price cap that was discussed at a White House meeting with President Donald Trump in February. That plan also set off alarm bells among corn growers and senators from corn-growing states, including Sen. Chuck Grassley (R-Iowa), who pressed for a new meeting with Trump to discuss their stance.

"Our biggest concern right now is that there continues to be out of the White House talk about a cap on RINs," said Jon Doggett, executive vice president for the National Corn Growers Association. "And until that's off the table and that's not going to happen, all the rest of these proposals are for naught."

Sources in the corn industry and refining sector said major ethanol producers like POET and Green Plains were open to the idea of a triggered price cap, though POET vigorously denied it had endorsed that plan.

Trump has met with industry representatives, lawmakers and members of his Cabinet to try to resolve a dispute between two of

his key constituencies, the farmers in corn states like Iowa and the blue-collar workers in refineries in Pennsylvania, a state he narrowly carried in 2016. Refiners have kept the spotlight on the issue, arguing that even though EPA recently removed some of the burden on bankrupt refiner Philadelphia Energy Solutions, the costs of RINs was squeezing their business.

Ethanol producers have contended that a higher supply of RINs would drive down the prices that refiners pay for the credits, and EPA could increase the supply of RINs by granting a Clean Air Act waiver to allow year-round sales of E15 in all states. EPA Administrator Scott Pruitt said early last year that his lawyers are investigating that option, but he has not yet said whether it was legal.

Recent proposals to reduce the number of participants who can trade RINs — effectively preventing speculation from investment banks — have drawn support from all sides, and Pruitt told reporters last week he plans to implement such a measure.

But refiners are pressing for an immediate solution to lower RINs prices. Sources said the discussions underway are fluid, but a potential price cap could be triggered if E15 sales fall short of target volumes after a year, or if RIN prices remain too high at that time.

Another plan would use the same triggers, but to create a multiplier to increase the number of RINs attached to gallons of E11 and E15 fuel.

Refiners worried about high compliance costs say that ethanol producers appear to be softening their resistance to some kind of price control.

"Major ethanol producers have come to the conclusion that if an RVP waiver and a multiplier do not hold the line on RINs prices, then some form of cost-containing backstop is legitimate and acceptable," one refining source said.

Corn growers were angered by the apparent willingness of POET and Green Plains to accepting a triggered RIN cap.

"It is a widely known fact," Doggett said "Those are two companies out of a number of companies that produce ethanol in the country, those two companies have an opinion that is their opinion."

But POET said it remained opposed to a cap on RIN prices.

"We remain committed to what we sent over to the administration this week — and those did not include the RIN cap. We think that solves the problem," said Rob Walther, vice president for federal affairs for POET. "And more importantly, all subsequent conversations with the administration have been focused on the multiplier and have not endorsed a RIN cap."

"The biofuel and agriculture sectors, as well as our champions in the heartland and on Capitol Hill, remain adamantly opposed to any scheme that would cut, cap, or waive RINs," said Emily Skor, CEO of Growth Energy, an ethanol producers trade group.

Even the rumors the White House supports a cap on RIN prices riled up corn growers' Senate allies.

Sens. John Thune (R-S.D.), Deb Fischer (R-Neb.), Roy Blunt (R-Mo.), Joni Ernst (R-Iowa), and Grassley sent a letter to Trump asking for a meeting to make their opposition known.

"We are opposed to applying a 'waiver cap' mechanism of any kind to the RFS," they wrote. Grassley tweeted at Trump on Thursday night saying the cap "will be CATASTROPHIC to ethanol."

Other oil industry players have largely stayed in the background on the RFS battle in the White House. They remain hopeful that a legislative effort led by Sen. John Cornyn (R-Texas.) with input from Democratic Sen. Tom Udall (D-N.M.) can solve the deadlock.

"To paraphrase Winston Churchill, never have so many invested so much time for so little," said Stephen Brown, vice president for federal affairs for the refiner Andeavor. "While this chase continues when a more durable alternative, the Cornyn/Udall legislation, is actually gaining momentum among autos, ethanol producers, refiners and marketers."

EPA scientist fights for embattled risk-assessment program

By Corbin Hiar, 3/19/18

The scientist hired in the Obama administration's twilight to revitalize U.S. EPA's troubled Integrated Risk Information System could soon find herself forced to shutter the chemical-testing effort she's been battling to save.

Kristina Thayer's program — known by its acronym, IRIS — is unpopular with the chemical industry, its allies on Capitol Hill and the Trump administration. The omnibus appropriations bill for fiscal 2018 set for release tonight is expected to slash or entirely end funding for IRIS.

Thayer recalled her late-November 2016 arrival at EPA in a recent interview.

"I knew after the election that this might be a challenging time to come to EPA," she said.

The former National Institutes of Health scientist spoke to E&E News on the sidelines last month of a high-profile review of IRIS by the National Academies of Sciences, Engineering and Medicine. Thayer and public health advocates hope that review might serve as a lifeline for the endangered program.

Thayer and other IRIS backers might have initially drawn some encouragement from EPA's claims that enhanced chemical safety fits with Administrator Scott Pruitt's "back to basics" agenda.

But EPA's actions since then suggest otherwise.

The agency has moved to close its National Center for Environmental Research and held up draft regulations on chemicals like trichloroethylene, a dry-cleaning solvent that IRIS has found is carcinogenic to humans and can lead to developmental and immune system problems (E&E News PM, Dec. 14, 2017).

Meanwhile, the funding bill that Congress must pass by midnight Friday to avert a government shutdown poses an existential threat to IRIS. A bill released by Senate appropriators last November would zero-out IRIS's annual budget of just less than \$22 million.

That Senate spending package for environmental agencies — now under consideration as part of the must-pass omnibus — would also shift responsibility for chemical assessments from EPA's Office of Research and Development to the Office of Chemical Safety and Pollution Prevention. The top political official in the chemical safety office is Nancy Beck, a former executive at the American Chemistry Council (ACC), an industry group (Greenwire, Nov. 21, 2017).

The chemical assessment program and its 30 full-time staffers have long been housed in the agency's R&D arm, EPA's website explains, because "it ensures that IRIS can develop impartial toxicity information independent of its use by EPA's program and regional offices."

The chemical safety branch and regulatory offices where science is translated into action are more prone to political influence than the R&D office. Public health experts say politicization will worsen if IRIS is eliminated and Beck is given oversight of all chemical assessments.

"During the past year, from both within and without, EPA's traditional, even legendary, commitment to top-grade peer-reviewed science — done by scientists applying professional protocols without fear or favor — has been fiercely attacked by the regulated community, by Congress members and by some of the agency's own political appointees," Karl Brooks, a top Obama EPA official, told the National Academies. "I have never witnessed or studied such an obvious, straightforward and unapologetic campaign to replace and to dilute professional science with political expedience."

Reform push

IRIS began its work — evaluating chemicals that people incidentally consume or inhale — in 1985.

The tiny program's peer-reviewed assessments of published research are often used by state, federal and international regulators to set emissions limits for the chemicals in question, which is why it has long been the focus of industry opposition and congressional scrutiny. For instance, in the past decade, IRIS has been the sole subject of five hearings in the House science committee alone.

Prior to Thayer's arrival, IRIS's output had ground to a halt.

IRIS said in 2003 that 50 new or updated toxicity assessments were needed each year to meet the needs of regulators. But the program completed three assessments in 2013, one in 2014 and none in 2015.

In part due to the program's lack of productivity, EPA's process for assessing and controlling toxic chemicals has been a fixture on the Government Accountability Office's "high risk" list since 2009 (Greenwire, Feb. 12, 2015).

When GAO's most recent annual risk report was released a few months after Thayer had taken the helm, the watchdog agency credited EPA with improving the chemical assessment process.

Yet IRIS and the Toxic Substances Control Act (TSCA) programs remained on the risk list because EPA still "had not developed sufficient chemical assessment information under these programs to limit exposure to many chemicals that may pose substantial health risks," GAO said in February 2017.

Since then, Thayer has helped IRIS make significant strides in its procedures and politics.

She was helped in that effort by Tina Bahadori, who oversees IRIS as director of EPA's National Center for Environmental Assessment (NCEA) and was hired around the same time as Thayer. Bahadori had spent nearly a dozen years at ACC before joining EPA in 2012 to lead its Chemical Safety for Sustainability research program.

Thayer and Bahadori both came to EPA via a special authority the agency can use to attract or retain top scientists. That authority allows for pay above the federal pay scale, which maxed out at \$189,600 this year. But they also have fewer job protections than typical career employees.

"Tina comes with a lot of knowledge of the private sector and how it works," Thayer said of her boss, who also spent two years at the Electric Power Research Institute, a utility trade group. The IRIS director, on the other hand, began her career in public health by working at environmental groups.

"Our combined expertise have really complimented each other," Thayer said.

Under their leadership, IRIS has begun assessing chemicals using systemic review methods, which are formalized processes to identify, select and evaluate scientific evidence of varying relevance and quality. Thayer and Bahadori also modernized IRIS's research processes, broke up its assessments into more manageable pieces and created additional opportunities for public engagement, they told the National Academies panel.

Bahadori, meanwhile, has integrated IRIS's work into NCEA more closely so the program can draw on the specialized expertise of the center's scientists and refocused IRIS to help the toxics office meet the chemical review goals established by the 2016 TSCA reform law, which requires the office to complete reviews of 10 highly hazardous chemicals by 2019 and then ramp up to at least 20 reviews at a time (E&E News PM, Nov. 29, 2016).

The bottom line for IRIS is "we have to get a draft assessment done in two years and a peer review done in an additional year," Bahadori told the National Academies' panel. "So we are aiming for that three-year cycle, and in some cases faster than that."

She added, "You don't have to take my word for it. Let's see if we can actually deliver on this. That's our goal."

Political moves

Getting the National Academies to evaluate IRIS may be Thayer and Bahadori's most consequential achievement so far.

EPA requested the review even after a confidential draft budget last March called for eliminating the program (Greenwire, Dec. 1, 2017).

With the National Academies' report looming, the White House's final 2019 budget proposal called for IRIS to receive nearly \$12 million, which would shrink but not eliminate the chemical assessment program.

The National Academies are due to weigh in on the collective efforts of Thayer and Bahadori sometime this spring. Unless the panel comes back with a critical review, public health advocates hope that appropriators and the Trump administration will keep IRIS

alive (Greenwire, Feb. 2).

In the meantime, the unlikely duo of former environmental and industry scientists are making themselves known at EPA.

They moved NCEA from its Potomac Yard offices in Alexandria, Va., to the fifth and seventh floors of the Ronald Reagan Building and International Trade Center in Washington, across a courtyard from decisionmakers on Pruitt's team at EPA headquarters. And Thayer, whose 12-year-old son and 10-year-old daughter still live near the Research Triangle Park area of North Carolina, last year spent nearly 70 percent of her time working in the Washington region.

"People within my division are both physically here and in North Carolina," she said. "But I wanted to make a lot of in-person contacts."

EPA's press office didn't respond to a request for comment on the work of Thayer and Bahadori. But a spokeswoman said EPA "is currently reviewing the program to ensure it meets the highest standards to support EPA's programs."

ACC, Bahadori's former employer, declined to comment on the work she and Thayer are doing to save IRIS.

After the National Academies' workshop, however, an ACC spokesman cast doubt on their efforts and the usefulness of the review itself.

If previous recommendations by the National Academies had been fully adopted, the spokesman said, "the program would be operating in a more functional manner and would be able to produce chemical assessments in a way that is transparent to the public, timely and reflective of the best current scientific methodologies."

"The value of the IRIS and its future within EPA," he said, "should be left to Congress and EPA leadership to determine."

'There is no free time'

Thayer believes her background has well prepared her to face the challenges industry opposition or Pruitt's deregulatory focus may bring to IRIS.

That's in part due to the more than a decade she spent at the National Institute of Environmental Health Sciences (NIEHS). During her time there, she studied the health effects of widely used compounds like fluoride and bisphenol A, or BPA.

"I'm not new to the game of coming up with conclusions on controversial chemicals where not everybody is happy with the results," said Thayer.

At NIEHS, Thayer also became an expert in systemic reviews. The process had long been used in clinical medicine and drug trials, but it was relatively new to the field of environmental health when Thayer began working on it.

Previous National Academies' panels have called for IRIS to apply systemic review methods to chemical assessments. So Obama-era officials saw Thayer as a logical pick to overhaul what was then, by most accounts, a deeply troubled program.

Even the few years Thayer spent working for the World Wildlife Fund and the Environmental Working Group have proven valuable in her current position, she said.

"My experience in the nonprofit world is how to do more with less," the IRIS director said.

"That's actually, frankly, one of the reasons why I wasn't put off by this position," she added. "I fundamentally like the challenge of how do you take small teams and really make them deliver products that outsize the manpower, if you will."

Friends and public health colleagues — more than a half dozen of whom spoke to E&E News for this story — say the effort to save IRIS has placed an emotional strain on Thayer and her family.

Thayer herself said the experience has been "absolutely insane."

This year, the IRIS director plans to give up her apartment in suburban Washington and "be more anchored" at EPA's Research Triangle Park office, where she'll be closer to her children and many of the program's scientists.

"There is no free time," she said when asked about her hobbies, including playing pool. "It's kids, and it's work."

If Thayer was concerned about the future of that work, she did her best to hide it in the interview last month. Since then, however, she hasn't responded to follow-up questions or interview requests.

"We focus on the day to day," she said before heading back into the National Academies review. "There's a lot of answers we don't have yet, but we have to just keep doing our jobs."

E&E News PM

<https://www.eenews.net/eenewspm/stories/1060076645/search?keyword=EPA>

D.C. Circuit hands down split ruling on boiler standards

By Sean Reilly, 3/16/18

Industry and environmental groups each got something out of a court ruling today in the latest installment of a long-running legal battle over air toxics regulations for industrial boilers.

The U.S. Court of Appeals for the District of Columbia Circuit agreed with the Sierra Club that U.S. EPA failed to justify weakened limits for carbon monoxide when using the deadly gas as a surrogate for other hazardous pollutants and remanded them to the agency for further work.

But the American Chemistry Council and a dozen other industry organizations could also claim a partial victory as the three-judge panel found EPA's reliance on work practice standards for startups and shutdowns was adequate.

Those standards "reasonably approximate what the best-performing boilers can achieve," Judge Cornelia Pillard wrote in the 35-page opinion on behalf of the panel, which also included Judith Rogers and Sri Srinivasan. All three are Democratic appointees.

The Obama-era rules at issue were originally issued in 2011 — then amended in 2013 and 2015 — to curb hazardous air emissions from large industrial boilers, along with process heaters and smaller boilers.

Today's decision came almost exactly six months after oral arguments in the case. There, Pillard had appeared sympathetic to the arguments of the Sierra Club and several other environmental groups that EPA failed to justify its use of the 130-parts-per-million carbon monoxide limits as surrogates for organic hazardous air pollutants (HAPs).

"It just seems like this black box needs an explanation," she said at the time (E&E News PM, Sept. 15, 2017).

In today's opinion, Pillard wrote that the agency hadn't made the case that organic HAP releases "cannot be further reduced" when a boiler's carbon monoxide emissions are below 130 ppm.

EPA data didn't show, for example, that one such organic HAP, formaldehyde, was destroyed as carbon monoxide concentration dropped below the 130 ppm threshold, she wrote.

"EPA concluded that the otherwise well-documented general correlation between [carbon monoxide] and organic HAPs does not persist below 130 ppm without providing a reasoned basis for its conclusion," her opinion said.

Environmental groups had also challenged the specific work practice standards EPA allowed in place of numeric emissions limits for boiler startups and shutdowns.

During shutdowns, some emissions are exempt from pollutant controls. During startups, operators can use fuels not considered "clean" while then required to turn to cleaner alternatives "as expeditiously as possible."

The Sierra Club argued that EPA illegally expanded the startup period for which numeric limits don't apply to four hours, thus allowing boilers to sidestep emissions requirements for a longer period of time.

In today's opinion, however, Pillard wrote that the standards were "the product of considerable trial and error." While "painting in

broad strokes" in setting the four-hour limit, EPA's approach was reasonable, she wrote.

And by eventually requiring "numeric-standard compliance," the agency's rule "minimizes emissions by ensuring startup is not needlessly drawn out," wrote Pillard.

Reaction

In a phone interview, Sierra Club attorney Sanjay Narayan called the ruling a "win for public health" that will "appropriately control" emissions of formaldehyde and other organic air pollutants.

An American Chemistry Council spokeswoman, saying the group's attorney still needed to review the decision, had no immediate comment.

At the American Forest and Paper Association, one of the other industry challengers, President and CEO Donna Harman, welcomed the court's thumbs-up to work practice standards but urged EPA to end a "25-year rulemaking roller-coaster ride" by responding quickly to the court's remand of the carbon monoxide limits.

"Our companies are focused on generating essential power from their boilers and deserve affordable and achievable standards that are not constantly in flux," Harman said.

Today's ruling is a follow-up to a 2016 decision in the case *U.S. Sugar v. EPA*.

There, a somewhat different panel on the D.C. Circuit sided with environmentalists in throwing out part of the standards on the grounds that EPA erred in excluding some boilers that were among the best-performing in some subcategories. The standards would have been more stringent had they been included.

But the court in that decision severed the issues involving both the adequacy of EPA's carbon monoxide limits and the workplace standards for startups and shutdowns.

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http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=129919553&item=408&prod=deln&cat=AGENCY

EPA Shouldn't Have Eased Pollution Limit for Boilers, Court Says (1)

By Jennifer Lu, 3/19/18

The EPA shouldn't have scaled back stricter emissions standards it set for heavy-duty furnaces used to generate steam at manufacturing facilities including paper mills and auto plants, a federal appeals court ruled March 16.

Judges in the U.S. Court of Appeals for the District of Columbia Circuit sided with environmental groups led by the Sierra Club that said the Environmental Protection Agency shouldn't have adjusted its standards for carbon monoxide, a stand-in for organic air pollutants including formaldehyde, so that industrial boilers could emit more pollution.

"EPA did not adequately justify its change of direction on the carbon monoxide limits because it failed to explain how the revised limits would minimize the targeted pollutants to the extent the Clean Air Act requires," a three-judge panel said in an [opinion](#) written by Judge Cornelia Pillard.

The ruling, paired with an earlier *U.S. Sugar Corp. v. EPA* decision, could change how EPA measures the toxic organic air pollutants it is supposed to control.

"This is not just about carbon monoxide, which is bad for you," James Pew, the Earthjustice attorney representing the Sierra Club, told Bloomberg Environment. "It's about a whole bunch of things that are bad for you and can cause cancer and birth defects."

Lawyers representing industry interveners declined to comment, Jennifer Scott, communications director for the American Chemistry Council, told Bloomberg Environment.

The court remanded the case to EPA and told the agency to reconsider its decision to adopt current carbon monoxide limits, but did not vacate the carbon monoxide standard "because vacatur would cause substantial disruptive effects by removing emissions

limits” for the regulated hazardous air pollutant.

The court also dismissed a separate Sierra Club claim that the EPA provisions for startup and shutdown of the industrial boilers were too lax.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg, the ultimate owner of Bloomberg Environment.

Standards for Some 14,000 Boilers

Industrial boiler emissions standards apply to approximately 14,000 boilers in the U.S., according to the EPA.

The EPA first set standards for toxic boiler emissions in 2004. In an update in 2013, the agency revised the standards so that there were none more stringent than limiting carbon monoxide emissions to 130 parts per million.

Because the EPA didn't make this change through a notice and comment period, Pew said, outside groups had to petition for reconsideration in 2013.

When the agency reconsidered its toxic air pollutant standards for industrial boilers in 2015, it retained the 2013 decision easing carbon monoxide standards, prompting environmental groups to sue in January 2016.

The EPA argued in the case that limiting carbon monoxide emissions to below 130 ppm would not necessarily reduce organic pollutants further. But the court said past EPA data contradicted that claim.

The agency also contradicted its claim in a separate case, *U.S. Sugar Corp v. EPA*, that carbon monoxide was a good surrogate for toxic air pollutants at levels below 150 ppm, Pew said.

That case resulted in EPA having to reconsider whether carbon monoxide is a reasonable surrogate for organics at all, Pew said.

In the case decided March 16, the court ruled that whether the EPA regulates hazardous air pollutants directly or through a surrogate, it has to reduce emissions to the maximum level achievable.

“It's not good enough for EPA to opine it's getting good enough reductions,” Pew said.

“We often focus on power plants as sources of pollution,” Frank O'Donnell, president of the advocacy group Clean Air Watch, told Bloomberg Environment. “But there are many hundreds of thousands of industrial boilers out there that also pump out pollution, including toxic chemicals, and often, if those things were not controlled, public health would suffer greatly.”

The case is *Sierra Club v. EPA*, D.C. Cir. App., No. 16-1021, 3/16/18.

BNA

http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=129919554&item=408&prod=deln&cat=AGENCY

Pruitt's Delay of Chemical Safety Rule Faces D.C. Circuit Test (1)

By Sam Pearson, 3/19/18

Opponents of an EPA effort to delay a chemical safety regulation intended to protect emergency responders and local communities urged federal judges March 16 to let the rule take effect.

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments about whether the Environmental Protection Agency violated the Clean Air Act in granting petitions to reconsider the regulation (RIN:2050-AG82), and then delaying its effective date until 2019. The rule was issued in January 2017, during the Obama administration.

At stake is how much the EPA must prove before rolling back regulations it finds objectionable, and whether the emergency response and coordination requirements called for in the rule will take effect at high-risk chemical facilities.

Industry groups have argued that transparency about such risk-management plans could compromise security, whereas some community members said they need information to care for workers during plant disruptions, fires, or explosions.

According to opponents, the EPA violated the Clean Air Act in delaying the regulation in response to industry-backed reconsideration petitions that raised questions about the rule. It was improper for the agency to delay the regulation without determining the complaints were valid, they said.

“The whole purpose and effect of this was to enable and ensure noncompliance,” Emma Cheuse, a staff attorney at Earthjustice, told the court.

To the contrary, regulators need discretion to develop new policy solutions during a new administration, Jonathan Brightbill, a deputy assistant attorney general representing the EPA, told the court. The public would not be harmed by the regulation's delay because many of the provisions would not have taken effect for years anyway, he said.

EPA Revises Rule

The EPA is crafting a replacement rule ([RIN:2050-AG95](#)) and sent a draft of the changes it's proposing to the White House Office of Management and Budget March 12.

Local and national public health and environmental groups, labor unions, and 11 states sued the agency last year, arguing it did not provide sufficient reasons for the delay.

The EPA said it needed to push back the rule while the reconsideration process moves forward, Cheuse told the court, but under the Clean Air Act, the agency cannot delay a regulation solely because it is reconsidering it.

“That is not reasoned decision-making,” Cheuse said.

Rather, the agency must determine that the concerns industry organizations raised are valid instead of simply asserting that they could be valid and that the EPA needs time to find out, she said.

Questioning

Judge Judith Rogers, a Clinton appointee, appeared to sympathize with some of the arguments against the EPA, while Judge Brett Kavanaugh, a George W. Bush administration appointee, was more skeptical of the petitioners' claims.

It seems like “administrative law 101,” that an agency can amend any part of a prior rule as long as it gives notice and accepts public comments, Kavanaugh said.

Instead of putting the regulation on hold, the EPA could have proposed narrow revisions to the rule to address specific concerns, such as the issue of security disclosures to local response organizations, Rogers said.

Companies could go to court if they disagree with specific requests for information from local first responders, rather than have the EPA put the entire rule on hold, added.

Delaying the regulation so long could make it harder for companies to meet the original compliance deadlines, according to Rogers.

“The delay rule tells them, ‘Don't worry about it,’” he said.

Restricting the EPA's ability to delay the rule could leave it with a binary choice to keep an old regulation in place or rescind it entirely, he warned. The EPA at least found “cause for doubt” over the previous administration's actions, Kavanaugh said.

The case is [Air Alliance Houston v. EPA](#), D.C. Cir., No. 17-1155, *oral argument* 3/16/18.

E&E News PM

<https://www.eenews.net/eenewspm/stories/1060076643/search?keyword=EPA>

Case over delayed EPA rule puzzles D.C. Circuit

State and environmental foes of the Trump administration were in federal court today trying to knock down U.S. EPA's decision to delay chemical safety rules.

But while courts have been receptive to other lawsuits challenging delays in Obama-era environmental and energy standards, judges on the U.S. Court of Appeals for the District of Columbia Circuit today appeared to struggle over EPA's authority in this case.

They kept attorneys for two hours, well past the 40 minutes they had allotted for arguments. "This is complicated," Judge Judith Rogers, who presided, said around the half-hour mark.

At issue is a regulation EPA published in January 2017, shortly before the Obama administration left office, aimed at protecting emergency responders from chemical exposure, preventing accidents at plants and helping facility operators learn from accidents that do occur.

The rule was supposed to have gone into effect in March 2017, but EPA Administrator Scott Pruitt stayed compliance for 90 days. The agency followed up in June by announcing a nearly two-year delay to Feb. 19, 2019, after holding a public comment period (E&E News PM, June 12, 2017).

Pruitt said EPA needed more time to weigh concerns, including those raised by some states that the rule would pose national security risks because it would allow data about chemical facilities to be disclosed to the public.

Environmentalists and other states sued, charging EPA had both violated the Clean Air Act and failed to follow proper rulemaking procedures.

In August 2017, the D.C. Circuit panel denied a request by the plaintiffs to immediately reinstate the rules but agreed to hear the case in an expedited manner (Greenwire, Aug. 31, 2017).

Today's proceedings were punctuated by several complex exchanges between judges and attorneys over what Congress intended in the Clean Air Act and the ability of a new administration to reconsider the decisions of a prior one, as well as the practical effects of both the underlying rule and delaying it for nearly two years.

The panel's lone conservative appointee, Judge Brett Kavanaugh, appeared most likely to side with EPA. At one point in the lengthy arguments, he said the agency's decision to delay the rule when presented with national security concerns was the product of "good government."

"Judges do this, too," Kavanaugh said. "We issue a decision. We're pretty certain about it. And then someone raises something — actually, this, that or the other thing — and we may have some more doubts about it."

"So, too, an agency. ... It would seem like that's just good government for an agency, when it's presented with things that might be different from what they had assumed, to think about that," he said.

Kavanaugh, who was appointed by former President George W. Bush, noted that the Obama administration similarly delayed the effective date of a rule setting requirements under the Clean Air Act New Source Review program when it took office.

"What's wrong with saying, 'We want to look at that more carefully'?" Kavanaugh asked.

'Effective rescission'

The Trump administration's foes, though, argue EPA based its delay on a provision of the Clean Air Act that allows the agency to put off a rule by only 90 days if it has received reconsideration petitions.

EPA has turned that authority into an "effective rescission" of the Obama-era standards, argued Emma Cheuse, an attorney at Earthjustice representing Air Alliance Houston and other community organizations.

She also argued that Congress, in the 1990 Clean Air Act amendments, ordered EPA to set an effective date "as expeditiously as practicable."

"The fact that they might put something in place in the future is not sufficient reason to suspend it," Cheuse said.

Judge Robert Wilkins, an Obama appointee, asked several questions about EPA's reconsideration authority, suggesting the case was different from a lawsuit last year in which the D.C. Circuit ruled EPA exceeded its authority by delaying a rule for limiting methane emissions from oil and gas operations by 90 days.

Rogers, a Clinton appointee, said the issues were complicated because, in the "real world," a new administration needs more than 90 days to figure out how it wants to approach such a complex rule.

"They're trying to find out where their new offices are, who their assistants are going to be, what experts they're going to rely on. All that can't happen in 90 days," she said. "Was Congress really considering this aspect of a new administration having a different worldview?"

But Rogers also grilled Jonathan Brightbill, a Justice Department attorney representing EPA, over why the agency labeled its action as a "reconsideration" — and thereby raised the legal questions about its authority to extend a delay beyond 90 days — and didn't just launch a new rulemaking.

"Go ahead and put out a notice of proposed rulemaking, and let's move forward," Rogers said.

Brightbill said EPA sent such a notice to the White House Office of Management and Budget this past Monday and that the agency is on pace to issue a new rule when the delay expires.

'Horrible accidents'

The arguments took place in the wake of an explosion yesterday at a Texas chemical plant that injured two workers and left a third missing.

The environmental and state litigants say that the longer the rules are delayed, the more likely it is that events like that will occur.

Susan Eckert, an attorney representing the United Steelworkers and other labor unions, said Hurricane Harvey especially highlighted the safety concerns that the Obama-era rule aimed to address.

Flooding from the hurricane, which rocked Houston in August 2017, caused chemical fires and explosions at an Arkema Inc. plant. Lawsuits allege the plant lacked emergency plans and was unprepared for the flooding.

"Workers are hurt first and worst when there is one of these accidental releases," Eckert said. "If the rules had gone into place, they would have already helped our members deal with these horrible accidents."

Eckert's testimony prompted Rogers to pointedly ask Brightbill, the attorney representing EPA, about the people who are "injured" and "dying" because of accidents that occur regularly at chemical plants.

"The record is full of this problem that these are extremely dangerous situations, people are continuing to be harmed," she said. "I don't see anything in the delay rule that says, 'We have evidence that these harms are not occurring.'"

According to court filings, an average of 200 reported incidents occurred each year at chemical plants between 2004 and 2013, during which time 59 people died.

Brightbill countered that only one major provision of the Obama standards would be affected by the delay. That provision requires emergency responders and facilities to do coordinated planning on an annual basis. The rest of the provisions have longer compliance deadlines, he said.

"The delay rule is actually very limited in scope," Brightbill said, adding that facilities are already doing planning that's "substantively very similar" under community right-to-know laws.

Shannon Broome, an attorney representing an industry coalition that's challenging the underlying rule, said the status quo was effective for responding to incidents at chemical plants. She accused the plaintiffs of overstating the impacts of the delay and said the process and chemical at issue at Arkema were not subject to the updated rules.

Broome also argued there were serious concerns about private citizens having access to sensitive data about facilities. EPA "did the only thing it possibly could do when this information came to its attention," she said.

On behalf of a coalition of states, Louisiana Solicitor General Elizabeth Murrill argued that the Trump administration was, contrary to its foes' arguments, actually saving more lives by delaying the rule.

She said that the Obama rule had created confusion, "the enemy of effective response."

"When you layer confusion and change that may again change and create more confusion, you are inhibiting the ultimate goal of this process, and that is to improve emergency planning and response," Murrill said. "Not delaying the rule could in fact jeopardize more lives because it injects that element of confusion and chaos and delay."

Wall Street Journal

<https://www.wsj.com/articles/fiat-chryslers-attempt-to-dismiss-emissions-cheating-case-fails-1521212736?mod=searchresults&page=1&pos=2>

Fiat Chrysler's Attempt to Dismiss Emissions-Cheating Case Fails

By Mike Spector, 3/16/18, 3:08 PM

Fiat Chrysler Automobiles FCAU -0.90% NV lost a bid to dismiss a lawsuit accusing it of rigging diesel-powered vehicles to dupe emissions tests, keeping the Italian-U.S. auto maker in the legal crosshairs over alleged environmental violations that have drawn comparisons to longstanding fraud at Volkswagen AG .

A federal judge late Thursday denied Fiat Chrysler's motion to dismiss a civil case in California, ruling that owners of more than 100,000 2014-2016 Ram pickup trucks and Jeep Grand Cherokee sport-utility vehicles with diesel engines can proceed to trial on claims the company cheated U.S. emissions tests and allowed its automobiles to pollute more than 20 times beyond legal limits. Vehicle owners allege they paid thousands of dollars above gasoline-powered models for Fiat Chrysler diesel vehicles that were improperly deemed environmentally friendly.

Fiat Chrysler didn't immediately respond to a request for comment. The auto maker has denied cheating on emissions tests and Chief Executive Sergio Marchionne has previously rejected comparisons to Volkswagen's fraud.

Volkswagen last year pleaded guilty to criminal charges in the U.S. and has paid billions of dollars in legal settlements after admitting to a long-running conspiracy to install illegal software on nearly 600,000 diesel-powered vehicles. The software, known as a defeat device, allowed vehicles to pass government emissions tests and then pollute far above allowable limits on the roadway.

The U.S. Justice Department sued Fiat Chrysler last May on behalf of the Environmental Protection Agency and accused the auto maker of using illegal software similar to the kind Volkswagen installed.

The Justice Department earlier this year sent a letter to Fiat Chrysler lawyers outlining an expectation of "substantial" financial penalties in its civil case against the auto maker, a person familiar with the matter has said. But no specific financial figure was raised during recent negotiations, this person said.

Fiat Chrysler believes a fix regulators approved last July to modify emissions in 2017 model-year vehicles is largely the same for older ones accused of flouting pollution limits, a lawyer for the auto maker has said. Fixing the vehicles would avoid the need to repurchase them from aggrieved customers, an expensive proposition that Volkswagen was forced to undertake for some of its affected automobiles.

The judge's decision in California also allows the case to proceed against Robert Bosch GmbH, a supplier accused of providing components that facilitated emissions violations.

A Bosch spokeswoman said the company "takes the allegations of manipulation of the diesel software very seriously." She said Bosch is cooperating with various investigations and defending its interests in litigation.

AP

<https://apnews.com/fcb9a26bd8d54107a0e812a1a175c44b/State-of-New-Hampshire-wants-control-of-wastewater-permits>

State of New Hampshire wants control of wastewater permits

3/18/18

DOVER, N.H. (AP) — New Hampshire could move to handle its own wastewater permitting instead of the federal Environmental Protection Agency under a bill.

The Portsmouth Herald reports the bill would allow the state to spend \$350,000 to explore the steps needed to delegate the Environmental Protection Agency's authority over wastewater permitting to the N.H. Department of Environmental Services.

New Hampshire is one of four states where EPA has such permitting authority.

The bill passed the state Senate Thursday. The legislation faces further votes.

Dover, Portsmouth and Rochester officials claim the EPA hasn't always considered local tax implications and science when making permitting decisions.

The three cities discharge treated wastewater into the Great Bay estuary. They've spent millions to fight the EPA's efforts to lower the maximum amount of nitrogen allowed in such discharge.

E&E Greenwire

<https://www.eenews.net/greenwire/stories/1060076721/search?keyword=EPA>

Chemical plume could threaten Lake Michigan inlet

3/19/18

A plume of pollution from a firefighting training facility in northern Wisconsin has spread and may be leaching into the Michigan side of Green Bay, part of Lake Michigan.

The chemicals — perfluorooctanoic acid, or PFOA, and perfluorooctane sulfonate, or PFOS — have contaminated groundwater near a site in Marinette, Wis., operated by Tyco Fire Products LP.

The company, owned by Johnson Controls International PLC, started supplying bottled water to nearby residents in December and is developing a cleanup plan with the Wisconsin Department of Natural Resources.

PFOA and PFOS have been used for decades in firefighting foam and a variety of industrial and commercial products. They are not formally regulated by the federal government, but U.S. EPA sees them as an emerging health threat and in 2016 issued an advisory with a recommended limit for drinking water.

"We remain committed to this community. We live here and we work here," said Fraser Engerman, director of global media relations for Johnson Controls International.

The company this month submitted plans to determine the scope of the problem, which the state DNR is now reviewing.

Steve Ales of the Wisconsin agency said it's likely the pollution has hit Green Bay, though there's no data yet to confirm it.

"It's huge," said Jeff Lamont, a property owner and professional hydrogeologist whose well has been tainted with the chemicals. "I just don't think we know the full impact of this yet."

He added, "It's definitely pooping out into the bay" (Lee Bergquist, Milwaukee Journal Sentinel, March 19). — NS

EPA rejects wetland permit for Mich. mine opposed by tribe

3/19/18

U.S. EPA has rejected a wetland permit for a proposed gold, zinc and copper mine in Michigan.

EPA said in a letter earlier this month to the Michigan Department of Environmental Quality that Aquila Resources Inc. had failed to meet Clean Water Act standards or sufficiently address tribal concerns about the Back Forty mine.

The Menominee Indians, located just across the border in Wisconsin, have fought against the mine for years, saying it could threaten water quality and sacred cultural artifacts (E&E News PM, Jan. 22).

The tribe and other mine opponents cheered EPA's action, saying it imposes significant hurdles on Aquila Resources.

"There's no one small fix the company can do," said Kathleen Heideman of the Upper Peninsula's Mining Action Group. "The company would have to fix it in so many ways, it would become a different permit, or a different project."

Aquila Resources did not respond to requests for comment. Michigan previously approved several key permits for the mine (Brian Bienkowski, Environmental Health News, March 19). — MJ